

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF NEVADA

3 LAS VEGAS, NEVADA

4 In re: USA COMMERCIAL MORTGAGE) MAY 3, 2006
COMPANY,) E-Filed: 06/01/06
5)
Debtor.) Case No.
6) BK-S-06-10725-LBR
Chapter 11

7 In re: USA CAPITAL REALTY)
ADVISORS, LLC,)
8)
Debtor.) Case No.
9) BK-S-06-10726-LBR
Chapter 11

10 In re: USA CAPITAL DIVERSIFIED)
TRUST DEED FUND, LLC,)
11)
Debtor.) Case No.
12) BK-S-06-10727-LBR
Chapter 11

13 In re: USA CAPITAL FIRST TRUST)
DEED FUND, LLC,)
14)
Debtor.) Case No.
15) BK-S-06-10728-LBR
Chapter 11

16 In re: USA SECURITIES, LLC,)
17)
Debtor.) Case No.
18) BK-S-06-10729-LBR
Chapter 11

19 PARTIAL TRANSCRIPT OF PROCEEDINGS
OF20 (06-10725) MOTION FOR JOINT ADMINISTRATION
WITHOUT SUBSTANTIVE CONSOLIDATION

21 AND

22 MOTION FOR ORDER UNDER

11, USC, SECTIONS 105(A), 345, AND 363

23 APPROVING DEBTORS PROPOSED CASH MANAGEMENT PROCEDURES

AND INTERIM USE OF CASH IN ACCORDANCE WITH

24 PROPOSED CASH BUDGET

AND

ORDER SHORTENING TIME

25 RE: MOTION TO EXTEND DEADLINE TO FILE

STATEMENTS AND SCHEDULES OR PROVIDE REQUIRED INFORMATION

1 AND
2 FINAL HEARING RE: ORDER RE STIPULATION
3 RE SETOFF AND BANK OF AMERICA ACCOUNTS
4 AND
5 ORDER SHORTENING TIME
6 RE: MODIFIED MOTION OF THE DEBTOR PURSUANT TO
7 11, USC, SECTIONS 363(B) AND 105(A)
8 FOR AUTHORITY TO PAY ADDITIONAL PREPETITION WAGES
9 TO SEVEN KEY EMPLOYEES
10 AND
11 (06-10726) MOTION FOR JOINT ADMINISTRATION
12 WITHOUT SUBSTANTIVE CONSOLIDATION
13 AND
14 MOTION FOR ORDER UNDER
15 11, USC, SECTIONS 105(A), 345, AND 363
16 APPROVING DEBTOR'S PROPOSED CASH MANAGEMENT PROCEDURES
17 AND INTERIM USE OF CASH IN ACCORDANCE WITH
18 PROPOSED CASH BUDGET
19 AND
20 ORDER SHORTENING TIME
21 RE: MOTION TO EXTEND DEADLINE TO FILE SCHEDULES
22 OR PROVIDE REQUIRED INFORMATION
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25 RE: MODIFIED MOTION OF THE DEBTOR
PURSUANT TO 11, USC, SECTIONS 363(B) AND 105(A)
FOR AUTHORITY TO PAY ADDITIONAL PREPETITION WAGES
TO SEVEN KEY EMPLOYEES
AND
(06-10727) MOTION FOR JOINT ADMINISTRATION
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PURSUANT TO 11, USC, SECTIONS 363(B) AND 105(A)
FOR AUTHORITY TO PAY ADDITIONAL PREPETITION WAGES
TO SEVEN KEY EMPLOYEES
AND
(06-10728) MOTION FOR JOINT ADMINISTRATION
WITHOUT SUBSTANTIVE CONSOLIDATION

1 AND
2 MOTION FOR ORDER UNDER
3 11, USC, SECTIONS 105(A), 345, AND 363
4 APPROVING DEBTOR'S PROPOSED CASH MANAGEMENT PROCEDURES
5 AND INTERIM USE OF CASH IN ACCORDANCE WITH
6 PROPOSED CASH BUDGET

7 AND
8 ORDER SHORTENING TIME
9 RE: MOTION TO EXTEND DEADLINE TO FILE SCHEDULES
10 OR PROVIDE REQUIRED INFORMATION

11 AND
12 ORDER SHORTENING TIME
13 RE: MODIFIED MOTION OF THE DEBTOR
14 PURSUANT TO 11, USC, SECTIONS 363(B) AND 105(A)
15 FOR AUTHORITY TO PAY ADDITIONAL PREPETITION WAGES
16 TO SEVEN KEY EMPLOYEES

17 AND
18 (06-10729) MOTION FOR JOINT ADMINISTRATION
19 WITHOUT SUBSTANTIVE CONSOLIDATION

20 AND
21 MOTION FOR ORDER UNDER
22 11, USC, SECTIONS 105(A), 345, AND 363
23 APPROVING DEBTOR'S PROPOSED CASH MANAGEMENT PROCEDURES
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PURSUANT TO 11, USC, SECTIONS 363(B) AND 105(A)
FOR AUTHORITY TO PAY ADDITIONAL PREPETITION WAGES
TO SEVEN KEY EMPLOYEES

VOLUME 1
BEFORE THE HONORABLE LINDA B. RIEGLE
UNITED STATES BANKRUPTCY JUDGE

Wednesday, May 3, 2006

9:30 a.m.

Court Recorder: Helen C. Smith

Proceedings recorded by electronic sound recordings; transcript produced by transcription service.

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I N D E X

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THOMAS J. ALLISON

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1 (Court convened at 09:48:38 a.m.)

2 (Partial transcript.)

3 THE COURT: Be seated. Okay. In the USA Capital
4 cases.

5 (Colloquy not on the record.)

6 THE COURT: Appearances for the attorneys, please.

7 MR. SCHWARTZER: Lenard Schwartzer and Annette Jarvis
8 on behalf of all the debtors and debtors in possession in this
9 case.

10 Your Honor, Ms. Jarvis has -- a pro hac vice application
11 has been filed and granted in this case.

12 THE COURT: Okay.

13 MR. LePOME: Robert LePome representing Dr. and
14 Mrs. Stanley Alexander and 15 others that are owners of the
15 deeds of trust.

16 MR. FARROW: Good morning, your Honor. Scott Farrow,
17 United States Department of Justice, representing the U.S.
18 Trustee.

19 MS. DAVIS: Good morning, your Honor. Laurel Davis on
20 behalf of the Canepa Group who've been specifically identified
21 in our request for notice filed yesterday.

22 MS. CARLYON: Good morning, your Honor.
23 Candace Carlyon of the law firm of Shea & Carlyon on behalf of
24 Wells Fargo Bank and, also, as proposed local counsel for the
25 Interim Committee of Concerned Investors solely with regard to

1 the pleading filed yesterday.

2 MR. MEROLA: Good morning, your Honor. With your
3 permission, Frank Merola and Eve Karasik, members of Stutman,
4 Treister & Glatt, Professional Corporation, on behalf of the
5 Interim Committee of Concerned Investors.

6 MR. KINAS: Good morning, your Honor. Robert Kinas of
7 Snell & Wilmer for a group of direct lenders, including the
8 Zipkins and the Ovcas.

9 MR. COLVIN: Good morning, your Honor. David Colvin
10 of Marquis & Aurbach representing five direct lenders.

11 MR. GORDON: Good morning, your Honor. Gerald Gordon
12 and Gregory Garman of Gordon & Silver on behalf of this
13 proceeding of the Robert Buckalew Family Trust and also the
14 Higgins Family who we appeared on behalf of at the last hearing.

15 As we set forth in our pleadings, we're in the process of
16 forming an ad hoc committee of direct investors -- or, direct
17 lenders I should say, and we'll be filing the appropriate
18 2019(a) verified statement.

19 MR. MICHAELSON: Good morning, your Honor.
20 Jay Michaelson, Michaelson, Susi & Michaelson, for a group of
21 direct investors located in Santa Barbara.

22 MR. MCGIMSEY: Good morning. William McGimsey on
23 behalf of Jerry McGimsey and other membership interest holders
24 in U.S. Capital Diversified Trust Deed Fund.

25 MS. CHUBB: Good morning. Janet Chubb of Jones Vargas

1 for Joe and Loretta Donnolo, Mark Donnolo, Elizabeth and
2 Michael Souza, J.B. Partain, and other people.

3 MR. BENINCASA: Good morning, your Honor. I'm not an
4 attorney, but I'd like to represent myself, Joshua Benincasa and
5 Flocerfida Benincasa.

6 (Colloquy not on the record.)

7 THE COURT RECORDER: Last name, please.

8 MR. BENINCASA: Benincasa.

9 THE COURT RECORDER: If you could spell it for the
10 record.

11 MR. BENINCASA: B-e-n-i-n-c-a-s-a.

12 THE COURT: Okay. Thank you.

13 MR. BENINCASA: Thank you.

14 THE CLERK: No. It's 702 --

15 MS. NEWARK: Narrah Newark --

16 THE CLERK: -- 388 --

17 MS. NEWARK: -- representing Herbert Lumm (phonetic).

18 THE CLERK: -- 6647.

19 (Thereupon, the requested portion to be transcribed
20 was concluded at 09:15:17 a.m.)

21 (Testimony of Thomas J. Allison at 11:15:37 a.m.)

22 THE CLERK: All rise. Bankruptcy court is now in
23 session.

24 THE COURT: Be seated. Okay. On the motion for cash
25 management.

1 MS. JARVIS: If I could call Mr. Allison to the stand.

2 THE COURT: Yes.

3 THE CLERK: Mr. Allison.

4 THE COURT: In the connection we'll consider the
5 setoff and bank-account motion as well in these -- at least the
6 oppositions was related to these in some extent.

7 THE CLERK: Remain standing and raise your right hand.
8 Thereupon --

9 THOMAS J. ALLISON
10 was called as a witness by the Debtor and Debtor in Possession,
11 and having been first duly sworn, testified as follows:

12 THE WITNESS: I do.

13 THE CLERK: Would you state your name and spell your
14 last name for the record.

15 THE WITNESS: Thomas J. Allison, A-l-l-i-s-o-n.

16 THE CLERK: Thank you. Be seated.

17 DIRECT EXAMINATION

18 BY MS. JARVIS:

19 Q. Mr. Allison, can you explain what your position is in
20 this case.

21 A. Ms. Jarvis, I am the chief restructuring officer, and I am
22 essentially the CEO of USA Commercial Mortgage and its
23 affiliated entities.

24 Q. Why don't you give us some of your educational and
25 experience background.

1 A. I have a -- my undergraduate degree was in 1973 from
2 DePaul University. I have a BSc in accounting. I have an MBA
3 from DePaul University. I received that in 1979.

4 I became a banker in 1979 with the First National Bank of
5 Chicago. I was a banker at First Chicago from 1979 to 1985.

6 During that time, I was a team leader and led a very
7 complex portfolio of loans for First Chicago, including -- at
8 one point in time, my portfolio included Chrysler Corp.,
9 Chrysler Credit Corp., and Chrysler Finance Corp., along with
10 Massey Ferguson, Lex Corp. (phonetic), Lex Credit Corp.
11 (phonetic).

12 Several -- those were some of the major restructurings in
13 the early 1980s. I've been focussed on -- my focus in the
14 restructuring group is working with finance companies. After
15 leaving First Chicago, I started a restructuring practice for
16 Coopers & Lyburn (phonetic) in 1980 -- in -- in January of 1986.

17 In 1988 the partners of Arthur Andersen talked me into
18 starting a restructuring practice for Arthur Andersen. I ran
19 the restructuring practice for Arthur Andersen from 1988 until
20 Arthur Andersen's demise in 2002.

21 I then became a leader in Huron Consulting Group.
22 I started the restructuring group in 2002 and was
23 one of the founding partners at Huron Consulting. I
24 subsequently have recently joined Mesirow Financial as an
25 executive vice president and senior managing director.

1 Q. And is the focus of your work now actually being a
2 restructuring officer or restructuring companies?

3 A. Yes, it is.

4 Q. With respect to -- you became the restructuring officer on
5 the day the bankruptcy was filed; is that correct?

6 A. That's correct.

7 Q. And what have you done with respect to the former officers
8 of the company?

9 A. Well, after -- after I was appointed, my first act was to
10 terminate Mr. Milanowski and Mr. Hantges along with
11 all the brokers at -- at USA Commercial Mortgage.

12 Q. Who is currently on the board of Commercial Mortgage?

13 A. Mark Olson (phonetic) and Joe Milanowski.

14 Q. And do you have any reporting functions or do they have any
15 control over the decisions that you make in this case?

16 A. They have no control over the decisions that I make.

17 Q. And are you considering recruiting new outside board
18 members for the board?

19 A. Yes, I am.

20 Q. And why is that?

21 A. I'd like to have an independent board to report to and a
22 board that could be formed from people that have experience in
23 the finance and restructuring industry so I can have a good,
24 credible sounding board to -- to -- as I go through and
25 facilitate the restructure of this company.

1 Q. Now, you can see before you the chart, the organizational
2 chart that --

3 A. Actually, no --

4 Q. -- Mr. Schwartz --

5 A. -- I can't, but that's --

6 Q. Oh, you can't see it in your --

7 THE COURT: Is that monitor working?

8 THE CLERK: Whoops. No. None of --

9 THE COURT: Not that monitor --

10 THE CLERK: -- (indiscernible).

11 THE COURT: -- his monitor.

12 MR. MEROLA: Your Honor, while we work out the
13 technical, at this point I'd like to assert an objection to
14 hearsay, but we're willing to stipulate to Mr. Allison's
15 qualifications as an expert witness solely to the extent he
16 needs to incorporate hearsay into his testimony, and we have a
17 complete record.

18 THE COURT: Okay.

19 THE CLERK: Judge, this is not working today. I
20 think (indiscernible).

21 (Colloquy not on the record.)

22 THE COURT: Do you have another clean copy by any
23 chance? I'm sorry about this.

24 MS. JARVIS: Yeah. Well --

25 (Colloquy not on the record.)

1 BY MS. JARVIS:

2 Q. Let me just ask you. You saw the organizational chart
3 that Mr. Schwartzer used earlier.

4 A. Yes, I did, Ms. Jarvis.

5 Q. Do you have any --

6 A. Okay. We're --

7 Q. Is it on?

8 A. Yeah.

9 Q. Oh. All right. Okay.

10 MR. SCHWARTZER: Your Honor, do you want us to
11 introduce this into evidence?

12 THE COURT: Yes, please.

13 MS. JARVIS: We'll mark this as Exhibit 1.

14 THE COURT: Okay. This is the same thing that we
15 had --

16 MS. JARVIS: Yes. This is the same thing that
17 Mr. Schwartzer used.

18 THE COURT: Okay. Fine.

19 BY MS. JARVIS:

20 Q. You heard the explanation that Mr. Schwartzer gave with
21 respect to how these companies work. Is there anything else
22 that you would like to add to that?

23 A. Well, I think that what needs to be very clear is the
24 interdependence. What -- what this chart shows at -- at the
25 very bottom is the borrowers which are the underlying 114

1 credits that exist.

2 Essentially, this is the -- this chart, let us just say
3 it's very complex in how it lays out. I've tried to simplify
4 this company's business in terms of the investments and -- so we
5 can understand where each loan is.

6 The borrowers as -- as -- as scheduled on the bottom in
7 reality are the key assets of the estate, and in order to get
8 the recovery to all the people that are in this room and all the
9 investors, the ultimate recovery's going to be -- going to be
10 tied to our ability to successfully work out the nonperforming
11 loans and monetize them along with collecting the performing
12 loans.

13 Q. Let me put up -- can you see this?

14 A. It's --

15 Q. It --

16 A. Could we turn it on --

17 Q. It's sideways? The other way? Oh.

18 A. Actually, no. One -- one -- one more turn to the -- it's
19 -- you got it sideways.

20 UNIDENTIFIED SPEAKER: Clockwise one turn.

21 MS. JARVIS: (Indiscernible).

22 THE WITNESS: There.

23 UNIDENTIFIED SPEAKER: There.

24 THE WITNESS: Perfect.

25 (Colloquy not on the record.)

1 MS. JARVIS: We will mark this, your Honor, as
2 Exhibit 2, but because I wrote -- the handwritten parts on this
3 chart were written by me in order to use the terminology that we
4 discussed this morning so we could all understand it, so --

5 THE COURT: Okay.

6 BY MS. JARVIS:

7 Q. Okay. Can you now see this chart, Mr. Allison?

8 A. Yes, I can.

9 MS. JARVIS: And we'll mark this as Exhibit 2.

10 BY MS. JARVIS:

11 Q. What does this chart explain?

12 THE COURT: Do I have a copy of this? This is a
13 different chart, isn't it?

14 MS. JARVIS: Yeah. Can you see it up at your --

15 THE COURT: No.

16 MS. JARVIS: -- on your screen?

17 THE COURT: My screen's not working.

18 MS. JARVIS: Oh-oh.

19 THE COURT: Or how -- John (phonetic). Can John get
20 my screen working?

21 (Colloquy not on the record.)

22 THE COURT: Can you get John.

23 THE CLERK: Yeah. (Indiscernible).

24 THE COURT: I need my screen working.

25 THE CLERK: (Indiscernible).

1 (Colloquy not on the record.)

2 THE COURT: What --

3 THE CLERK: Is --

4 THE COURT: Did you (indiscernible)?

5 THE CLERK: -- it on?

6 THE COURT: Yeah. What --

7 THE CLERK: John was just in here.

8 THE COURT: Right. What do I need?

9 THE CLERK: (Indiscernible). I don't
10 (indiscernible).

11 (Colloquy not on the record.)

12 THE COURT: Nope. Whoops. Oops. A little mood
13 lighting in here. Well, that doesn't work. All right. I have
14 totally messed this system up. We're going to take a break so
15 we can fix this because you're seeing my picture on your screen
16 now, right? No?

17 MR. SCHWARTZER: No.

18 UNIDENTIFIED SPEAKER: No. We're okay.

19 THE COURT: Oh, okay.

20 UNIDENTIFIED SPEAKER: It's perfect.

21 THE COURT: John, you need to come around and get --

22 UNIDENTIFIED SPEAKER: Okay.

23 THE COURT: -- my screen to work.

24 (Colloquy not on the record.)

25 THE COURT: Anybody got a 16-year-old we can --

1 (Colloquy not on the record.)

2 THE COURT: We need to get what -- I don't have
3 what's on this screen. I want -- it's on there, and I need
4 to --

5 (Colloquy not on the record.)

6 THE COURT: They've got something on the overhead, but
7 the overhead's not working, either.

8 (Colloquy not on the record.)

9 UNIDENTIFIED SPEAKER: Your Honor, since you have a
10 technical person there, the people in the back are still having
11 trouble hearing. Maybe we can make it a little louder.

12 THE COURT: Oh, I just -- it's a microphone problem.

13 UNIDENTIFIED SPEAKER: Okay. Thank you.

14 THE COURT: Who are they -- is it the witness they
15 can't hear?

16 MS. CARLYON: Witness? Yes, the witness.

17 THE COURT: So he needs to get closer to his
18 microphone.

19 MS. CARLYON: Thank you.

20 THE COURT: And you need to --

21 THE WITNESS: Is this better?

22 UNIDENTIFIED SPEAKER: Yes.

23 (Colloquy not on the record.)

24 THE WITNESS: Okay.

25 UNIDENTIFIED SPEAKER: Okay.

1 THE WITNESS: Okay.

2 (Colloquy not on the record.)

3 THE COURT: I want the exhibit that's being shown
4 there.

5 (Colloquy not on the record.)

6 THE COURT: Is that still on your monitors?

7 MS. CARLYON: Yes.

8 THE COURT: Okay.

9 MS. CARLYON: It's yellow, but it's still here.

10 (Colloquy not on the record.)

11 THE WITNESS: It was better as yellow.

12 (Colloquy not on the record.)

13 UNIDENTIFIED SPEAKER: And you won't see that here.

14 THE COURT: Well, anyplace. On this screen, I don't
15 care, but just get those to work now, and we'll just deal with
16 it. I'll just get a copy.

17 (Colloquy not on the record.)

18 THE COURT: Can --

19 UNIDENTIFIED SPEAKER: I think theirs is working.

20 (Colloquy not on the record.)

21 THE COURT: Is yours working?

22 UNIDENTIFIED SPEAKER: Ours is working.

23 (Colloquy not on the record.)

24 UNIDENTIFIED SPEAKER: Yes. We --

25 THE COURT: Is the witness' --

1 UNIDENTIFIED SPEAKER: We --

2 THE COURT: -- working?

3 THE WITNESS: Yes, your Honor.

4 THE COURT: Okay. Does anyone have an extra copy for
5 me?

6 (Colloquy not on the record.)

7 THE WITNESS: Ms. Jarvis, can we make a copy for the
8 Judge?

9 MS. JARVIS: Yes.

10 THE COURT: Do you have an extra?

11 MS. JARVIS: I don't. I don't have an extra.

12 MS. CARLYON: That's the one that was on the screen.
13 The witness (indiscernible).

14 MS. JARVIS: Yeah. No. I'm sorry. Your Honor, I
15 don't have an extra because I've written --

16 THE COURT: Okay.

17 MS. JARVIS: -- on this.

18 THE COURT: Eileen, can you go make a copy?

19 THE CLERK: Yeah.

20 THE COURT: I'm sorry, everybody. I had no idea the
21 system wasn't going to work.

22 (Colloquy not on the record.)

23 MR. SCHWARTZER: I guess they'll have to do another
24 seminar on how to operate (indiscernible).

25 THE COURT: No. It's us.

1 (Colloquy not on the record.)

2 THE COURT: Well, there's nothing there now. Can you
3 just put a piece of paper on the --

4 (Colloquy not on the record.)

5 THE COURT: Mr. Schwartz, could you just put a
6 paper on your screen just so you test here?

7 MR. SCHWARTZER: Yes.

8 (Colloquy not on the record.)

9 THE COURT: Not your secret, no, just something we
10 could test with.

11 (Colloquy not on the record.)

12 THE COURT: There we go. My screen works. Does
13 everybody else's?

14 UNIDENTIFIED SPEAKER: Ours (indiscernible).

15 UNIDENTIFIED SPEAKER: Yeah.

16 UNIDENTIFIED SPEAKER: (Indiscernible).

17 (Colloquy not on the record.)

18 THE COURT: What about witness'?

19 THE WITNESS: Mine works.

20 THE COURT: Okay.

21 UNIDENTIFIED SPEAKER: Oh, yeah.

22 UNIDENTIFIED SPEAKER: (Indiscernible).

23 (Colloquy not on the record.)

24 THE COURT: Okay. Now, we just need to get -- now we
25 just need to get the exhibit back.

1 (Colloquy not on the record.)

2 THE COURT: Can you get it on that screen?

3 THE CLERK: That one (indiscernible).

4 THE COURT: Oh, is that screen --

5 THE CLERK: (Indiscernible).

6 THE COURT: Yeah. Can you get that screen to work
7 (indiscernible)?

8 (Colloquy not on the record.)

9 UNIDENTIFIED SPEAKER: (Indiscernible) screen to work.
10 Oh, boy. That's a good question. I (Indiscernible) think we
11 know where the controls are for that.

12 (Colloquy not on the record.)

13 UNIDENTIFIED SPEAKER: Well, let me run and get Vickie
14 (phonetic). She (indiscernible).

15 THE COURT: Well, she doesn't know how to do it
16 either, so we couldn't get the projection to work. We couldn't
17 get anything working this morning.

18 (Colloquy not on the record.)

19 THE COURT: So that's all right.

20 (Colloquy not on the record.)

21 THE COURT: Okay. All right. Thank you. So you can
22 put it back on the screen, and -- of course, it's too small for
23 anybody to read, anyway, but that's all right.

24 (Colloquy not on the record.)

25 THE WITNESS: Your Honor, I apologize for the --

1 MS. JARVIS: It's certainly (indiscernible).

2 THE WITNESS: -- the size of this, but I wanted
3 to --

4 MS. JARVIS: It's the wrong way.

5 THE WITNESS: -- reflect all 114 loans on one piece of
6 paper, so I had to compress the type.

7 THE COURT: I know you guys are saving money, but --
8 (Colloquy not on the record.)

9 THE WITNESS: And, your Honor, this is for
10 illustrative purposes.

11 THE COURT: Okay.
12 (Colloquy not on the record.)

13 MS. JARVIS: I'll hand this up, then, to be marked as
14 Exhibit 2.

15 THE COURT: Yes, please.

16 THE CLERK: I have (indiscernible).

17 THE COURT: You have it?
18 (Colloquy not on the record.)

19 THE COURT: Okay. Go ahead. I'm sorry.

20 BY MS. JARVIS:

21 Q. Mr. Allison, did you or did you direct your staff to
22 create this document?

23 A. I directed my staff -- they have better eyes than I do --
24 to -- to create this chart.

25 Q. And what does it show?

1 A. This chart is an extension of the first exhibit. The
2 first exhibit shows, essentially, the ownership interests in USA
3 Commercial Mortgage.

4 When we distill down the first -- USA Commercial Mortgage
5 into its essential parts, USA Commercial Mortgage was the -- the
6 cog in the wheel, if you will, that originated loans on one
7 side, and those loans are -- are -- are all shown on the -- on
8 the left-hand side of this column.

9 On the right-hand column is essentially what I would call
10 the loan participants, whether it be First Trust Deed Fund which
11 are fund members as we decided this morning, or Diversified
12 Trust Deed Fund which are fund members along with what we're now
13 styling as direct investors.

14 THE COURT: Lenders.

15 THE WITNESS: Direct lenders. Excuse me.

16 THE COURT: And I apologize, but I think -- the only
17 reason I thought it may helpful to use that is because
18 everybody's in their mind has invested money, so that's why I
19 think a lender might be a little easier.

20 THE WITNESS: And, your Honor, I -- I appreciate the
21 distinction because what we tried to do -- what -- what this
22 sheet attempts to do is take and -- and fully depict for you --
23 and let me move over to the left-hand side of the column, and I
24 apologize again for the -- the smallness of the type.

25 What the -- what the columns after the -- the -- the

1 columns at the top, FD, First Trust Deed Fund, Diversified
2 Trust Deed Fund, Real Estate Invest -- Real Estate Group, and
3 then we have -- and then we have the direct investors on the far
4 -- on the far column, and so --

5 THE COURT: IND (phonetic) --

6 THE WITNESS: IND.

7 THE COURT: -- is direct lenders?

8 THE WITNESS: IND --

9 MS. JARVIS: Okay. And so --

10 THE WITNESS: -- is the individual investors.

11 THE COURT: Okay.

12 BY MS. JARVIS:

13 Q. So, Mr. Allison, those five groups listed on the
14 right-hand side are what would be the investors or lenders, and
15 they're reflected across the tops of the columns on the
16 left-hand side --

17 A. That's correct.

18 Q. -- is that correct?

19 A. That's correct. First Trust Deed Fund, Diversified Trust
20 Deed Fund, Real Estate Group, REG, and then Investment Partners
21 and individuals. So those are -- those are the -- in Commercial
22 Mortgage are the -- are the -- are the categories.

23 Q. Okay.

24 A. So as you can see, as we -- as each loan is syndicated,
25 each loan has a varying participation by -- by each group.

1 Amsbury Hatteras Point (phonetic), for example, has a
2 participation from, essentially, all investors. And as you can
3 see, some -- some loans are 100 percent owned by -- or 100
4 percent invested into by individual investors while in -- in
5 most cases there's a participation that exists from each of the
6 Commercial Mortgage groups along with individual investors.

7 Q. And the Hatteras Point that you mentioned, is that the
8 starred loan that's up near the top?

9 A. Yes, it is, your -- Ms. Jarvis.

10 Q. And in that case, you have all five groups that have
11 participated in that.

12 A. That's correct.

13 Q. And did Commercial Mortgage also, at times, fund itself?
14 Was it a lender?

15 A. Yes, it is, and -- and I think I've given you Exhibit 2 to
16 evidence that.

17 Q. You heard my explanation of how the funds worked with
18 respect to being lenders as well, and I think you indicated to
19 me that I did not quite have it correct, so could you correct
20 what I said to the Judge.

21 A. Sure. Ms. Jarvis, just to correct and -- and be very
22 clear, each of the funds you have going through real estate
23 advisers became a --

24 THE COURT: And I appreciate you talking to me, but
25 I --

1 THE WITNESS: Okay.

2 THE COURT: We need you in the microphone, so --

3 THE WITNESS: Direct -- became a direct investor or a
4 direct participant in a -- in a pari passu position with the
5 individual investors in each loan.

6 THE COURT: Run that by me again.

7 THE WITNESS: So --

8 THE COURT: I'm sorry.

9 THE WITNESS: Okay. In -- in each of the loans --

10 THE COURT: Uh-huh.

11 THE WITNESS: -- as you can see on -- on the columns
12 on the left where there are, for example, First Trust Deed Fund
13 on the first loan, thirty-fifty (phonetic), San Fernando, First
14 Trust Deed Fund has an 11-percent participation in it.

15 Real Estate Investment Group -- Real Estate Group has a
16 participation in it, and individual investors have the majority
17 of the participation.

18 But when we look at the deed of trust, we would see that
19 they would be in a pari -- each -- each of the -- either the
20 fund or the investors are all listed pari passu on various -- on
21 lines assigning each deed of trust.

22 THE COURT: You mean they're not listed as having
23 that percentage interest?

24 THE WITNESS: They're listed as having a percentage
25 interest in the loan, and, actually, what I've done is provided

1 -- to provide you, your Honor, a sample of one of the loan
2 documents with the participants in the loan and -- and just
3 evidence that both funds and Commercial Mortgage would be a pari
4 passu participant in certain loan transactions.

5 MS. JARVIS: Your Honor, if I could -- and, again, I
6 just have one copy of this, so let me just put it down here and
7 let them show it, and then I'll hand it up to you.

8 THE COURT: Okay.

9 MS. JARVIS: And this is simply the front page
10 (indiscernible) of this.

11 THE WITNESS: You -- the -- you're bleeding -- it's
12 bleeding through because of the pages underneath it,
13 Ms. Jarvis.

14 BY MS. JARVIS:

15 Q. Oh. Yeah. Okay. Let me take it off. (Indiscernible).

16 A. Yeah.

17 Q. Okay. Right there. Okay. Let me fix this. Sorry. I
18 need my nine-year-old to help me on these technological issues.

19 (Colloquy not on the record.)

20 UNIDENTIFIED SPEAKER: Counterclockwise one.

21 UNIDENTIFIED SPEAKER: Counterclockwise it one.

22 (Colloquy not on the record.)

23 UNIDENTIFIED SPEAKER: There.

24 BY MS. JARVIS:

25 Q. Yeah. Okay. That's just the first page, and then I'll put

1 up the last page so you can see.

2 UNIDENTIFIED SPEAKER: Good. That's great.

3 MS. JARVIS: Okay. I'm getting better.

4 UNIDENTIFIED SPEAKER: Yeah.

5 MR. SCHWARTZER: If you look -- if you look at No.
6 260, your Honor, you'll see the --

7 THE WITNESS: Could you leave that down for a second,
8 Ms. Jarvis.

9 (Colloquy not on the record.)

10 THE WITNESS: You can see Investors 259 is USA Capital
11 First Trust Deed Fund is a \$965,000 direct investor in the loan,
12 and USA Commercial Mortgage, Investor No. 260, is a \$325,000
13 participant in that loan.

14 So each -- as you can see with the individual investors,
15 they're in a pari passu position in this North Yonkers loan.

16 So the way that -- the way that each of the -- and I've
17 reviewed many of the loan documents, and this is the way
18 they've been evidenced is the funds being pari passu
19 participants in each of the loans.

20 MS. JARVIS: Your Honor, if I may, I'll hand this up
21 and have this marked as Exhibit --

22 THE COURT: Okay.

23 MS. JARVIS: -- 3. Let me now hand up -- this
24 actually was submitted as Exhibit 8, Mr. Allison's declaration,
25 and if I could hand it up --

1 UNIDENTIFIED SPEAKER: That's okay.

2 MS. JARVIS: -- and have it marked as Exhibit --

3 MR. GORDON: Your Honor, may we just have -- obviously
4 he's testifying at this time, but I assume that the declaration
5 is his direct testimony, and I would stipulate to the admission
6 of his declaration and testimony -- his direct, plus the
7 attachments, and he can identify those if necessary.

8 MS. JARVIS: Your Honor, we just want to add we're not
9 going to go over what's in there. We want to just add to it to
10 make sure that those in the courtroom today have a complete
11 understanding --

12 THE COURT: Okay.

13 MS. JARVIS: -- of this.

14 THE COURT: So that's fine.

15 (Colloquy not on the record.)

16 MS. JARVIS: And this, by the way, your Honor, this
17 has been -- Mr. Allison's declaration has been posted on the Web
18 site, again, so that this is information available. I'm just
19 going to put the first page of this.

20 THE WITNESS: Thank you, Ms. Jarvis. What -- what
21 this does is -- obviously, it's a little bolder print than the
22 last exhibit that we put up, your Honor, but this goes to each
23 of the loans.

24 And if we -- Ms. Jarvis could slide it over a little bit to
25 the right. Yeah. Just a little bit more so we can show the

1 loans are performing or nonperforming.

2 What we've done -- and I've -- and I've created a loan
3 class from my banking days, your Honor, of categories in loans
4 of performing and nonperforming.

5 Performing loans are those that are paying interest
6 currently. Nonperforming are those that are delinquent.

7 And I also have a watch list which are performing loans
8 which may -- which look like they're about to exhaust interest
9 reserve and may go nonperforming.

10 So, essentially, what I've done is gone through, and I've
11 conducted a fairly extensive loan review in the two-and-a-half
12 weeks that I've been involved as the -- as the CRO to determine
13 the perform -- excuse me -- the performance of each of the loans
14 where each of the loans stands in terms of its -- its relative
15 position and the interdependence of each of those loans in terms
16 of which loans are to -- which loans are to related parties
17 where investment partners may be a principal underneath the loan
18 or -- or where there are multiple loans to one party.

19 MS. JARVIS: And --

20 THE COURT: Just one question. I'm sorry. When you
21 said the interest reserve was depleted, are you saying that in
22 some cases no payments were yet due by the borrower, but there
23 was money put aside to pay interest on some of these loans?

24 (Colloquy not on the record.)

25 THE WITNESS: Yes, your Honor. On some of the loans

1 there was, for example, land development loans where there's no
2 revenue, and the Bundy Canyon loans would probably be a pretty
3 good example of that.

4 One of the earlier Bundy Canyon loans is nonperforming.
5 It's nonperforming because it's exhausted its interest rate
6 reserve.

7 THE COURT: So we have no idea on those loans whether
8 or not the borrowers are capable of --

9 THE WITNESS: There's no --

10 THE COURT: -- making --

11 THE WITNESS: There's no revenue on -- on the Bundy
12 Canyon loans. It's a land amalgamation.

13 That's the -- that's the -- you'll -- you'll see a motion
14 later. That's why I stopped -- want to stop the last
15 transaction on Bundy from -- from being consummated.

16 But until the land's put together -- it's authorized for
17 development -- there would be no revenue off of -- off of that
18 land.

19 So to the extent that -- that the -- when the interest
20 rates are -- reserves are exhausted, there wouldn't -- there
21 would not be an ability for the Bundy's, for example, to
22 service ongoing interest. There's no revenue attached to it
23 until the land is subsequently liquidated.

24 BY MS. JARVIS:

25 Q. And, Mr. Allison, generally, what was the status of the

1 loan portfolio at the time that you became the CEO?

2 A. Well, what I did is create a loan portfolio, Ms. Jarvis.
3 There were -- we had loan documentation for the original loans,
4 but we didn't -- what we -- you're seeing now in the construct
5 of performing, nonperforming loans, date of origination, amount
6 outstanding, interest, interest and participations, we -- we
7 basically built this from scratch.

8 So the work that we're doing -- work that we've done over
9 the past two-and-a-half weeks is to -- to create, essentially,
10 the portfolio that a third party can understand in terms of
11 looking at -- looking at the loan portfolio now and
12 understanding it, whether it's nonperforming, performing.

13 The next step along the path, and we have a motion up to
14 retain an appraisal firm, and I want to get a current appraisal
15 of each of the loans so I can understand what the true value of
16 the loans are today.

17 And, also, what I've been trying to do is unwind the
18 interdependence. Several of loans which -- several of the
19 loans are grouped into individual developers where they may
20 have performing and nonperforming loans.

21 So I have started to meet with the -- the individual
22 developers or borrowers to -- to -- to understand what their
23 intents are to repay loans, and I've served that process
24 already.

25 Q. And by number and amount, how many of the loan portfolio

1 was nonperforming at the time that you became the CEO?

2 A. Approximately 60 percent was nonperforming.

3 Q. And what progress have you made with respect to those
4 nonperforming loans in the last two-and-a-half weeks?

5 A. In the last two-and-a-half weeks I -- I can tell you I've
6 collected 2.1 million dollars of delinquent interest and have
7 collected one delinquent loan that was in arrears of interest
8 for a year that -- and that loan has been paid back. It's 4.9
9 million dollars of principal and \$800,000 of delinquent
10 interest.

11 Q. And have you established procedures going forward to
12 collect these loans?

13 A. Yes, I have. I'm -- I'm meeting with our -- I'm meeting
14 with our problem loans and scheduled meetings on an aggressive
15 basis to aggressively collect our money.

16 One of the things that I -- that was evident at the
17 company was that there really wasn't a formalized collection
18 effort, and I've instituted that since I've become -- became the
19 CEO.

20 Q. And have you also been interfacing with regulatory
21 agencies?

22 A. Yes, Ms. Jarvis. I meet frequently with Ms. Eckard
23 (phonetic) of the mortgage lending division, and I meet
24 frequently with the members of the SEC.

25 Q. And is part of what you're doing providing information to

1 these agencies?

2 A. Yes, I am.

3 Q. And are these agencies satisfied with the information that
4 they've received, to your knowledge?

5 A. Both agencies have told me that they're -- they're very
6 pleased with where we're at, and that we've -- they believe
7 we've made substantial progress, and that we're probably three
8 to six months ahead of where they thought that we'd be at this
9 point in time.

10 Q. On the collections, is it possible that all the investors
11 or all the lenders in this case will be paid in full?

12 A. There's a strong probability that that's the case. Yes. I
13 -- my -- from looking at the loans and looking at the fact that
14 they haven't been tended to, the evidence I -- that I can just
15 give you is my opinion in the first two weeks I've -- the first
16 two-and-a-half weeks of my tenure is that, you know, we've
17 collected 2.1 million dollars of past-due interest.

18 We've -- we've put some pressure on and have collected a
19 past-due loan. We monetized it in full. The loan was
20 not -- there was no interest or principal paid in a year.

21 To the extent that we have a secured deed of interest, and
22 we have a -- and we -- we had the ability to foreclose on it,
23 what we're doing is taking the efforts necessary -- the efforts
24 necessary to monetize this portfolio.

25 And by monetizing the portfolio, it's my hope that if the

1 evidence of the first two weeks holds true, that we'll be able
2 to get the investors back both their principal and interest.

3 MS. JARVIS: Let me mark this as Exhibit 5?

4 THE CLERK: 4.

5 MS. JARVIS: 4.

6 (Colloquy not on the record.)

7 THE CLERK: It would be 4.

8 UNIDENTIFIED SPEAKER: Okay. 4.

9 UNIDENTIFIED SPEAKER: (Indiscernible).

10 THE COURT: No. I think we had this -- this was one
11 that you didn't get, this --

12 THE CLERK: That was 3?

13 THE COURT: No, that was --

14 THE CLERK: Yeah. This is Exhibit 4.

15 THE COURT: 4.

16 THE CLERK: This has Exhibit 5. Do we need copies of
17 Exhibit (indiscernible).

18 THE COURT: Here. You gave me 3, this one. This is 3
19 you gave me.

20 THE CLERK: Yeah. So do you want to have that?

21 THE COURT: Yeah. Um-hm.

22 BY MS. JARVIS:

23 Q. Okay. Mr. Allison, may I refer you to the chart that I
24 marked as Exhibit 5. Can you explain what the investor account
25 is.

1 A. The investor account -- as we go through the accounts, I
2 think it's -- if we walk through USA Commercial Mortgage's
3 service agent, this is the -- so if I can step back for a
4 second.

5 USA Commercial Mortgage is the servicing agent, and it's
6 the -- it's the company that's in the middle of Exhibit 2. What
7 this chart provides for is that principal and interest are --
8 are collected through the -- from the borrowers we collect
9 principal and interest. They go into a collection account.

10 Q. And let me just interrupt for a second. That's after the
11 loans have been originated. The loans are in place. Then the
12 collections made on those loans go into the collection account.
13 Is that --

14 A. That's correct.

15 Q. -- correct?

16 A. The investor account is when moneys were solicited from
17 investors and brought into the company.

18 For example, if we wanted to do Bundy Canyon 5, the -- the
19 origination team would say we have a secured -- we have a loan
20 and would you like to buy a fraction -- would you like to invest
21 in a fractional piece of a property.

22 And the investors then would invest their -- would --
23 would put their money into an account, and that investor -- for
24 an investment, and that money would be amalgamated to -- and
25 when the -- when the 8.9 million dollars was fully syndicated,

1 it would then go to -- to become an investment.

2 Q. So let me just summarize. So in the investor account is
3 where moneys went prior to the time that loans were originated.

4 A. Yes, that's correct.

5 Q. And you referred to the Bundy Canyon. There is a motion
6 pending with respect to --

7 A. That's correct.

8 Q. -- those issues. Okay.

9 THE COURT: No. And in that trust account, was that
10 money collected from people who were direct lenders only or was
11 it money from people who were going to become members in the
12 fund as well?

13 THE WITNESS: I'm sorry, your Honor. Could you
14 identify which account you're speaking of.

15 THE COURT: The investor trust account.

16 THE WITNESS: The investor account was where moneys
17 would -- came in for -- that was our source of cash to initiate
18 loans.

19 UNIDENTIFIED SPEAKER: Okay.

20 THE COURT: From direct lenders only.

21 THE WITNESS: From direct lenders only or --

22 THE COURT: Which could include the fund as a whole.

23 THE WITNESS: Yes.

24 THE COURT: Okay. But there were separate accounts.
25 If somebody wanted to become a member, they just -- the money

1 just came in.

2 THE WITNESS: The money came in --

3 THE COURT: Okay.

4 THE WITNESS: -- and it was -- it was (indiscernible)
5 accounts trade in the investor account.

6 BY MS. JARVIS:

7 Q. So, in other words, your testimony is that the investor
8 account included everything to fund a loan which might come from
9 the direct lenders as well as from the funds as --

10 A. That's correct.

11 Q. -- lenders.

12 THE COURT: But if an individual member wanted to
13 become a member, was there -- I guess it wasn't a separate
14 account. It just came in and was immediately put in the fund --

15 THE WITNESS: Right. Then --

16 THE COURT: -- account.

17 THE WITNESS: Again, what we're looking at, your
18 Honor, is USA Commercial Mortgage, which is the circle in the
19 middle of our previous exhibit.

20 When the members of each of the -- the funds were
21 solicited for their moneys, that was through each of the fund
22 solicitations. When we moved money into direct investments, it
23 went through USA Commercial Mortgage as servicing agent.

24 THE COURT: Okay. So, again, that wouldn't have been
25 -- anybody who wanted to become a member of the fund, who became

1 a member of the fund, that money wouldn't be in the investor
2 trust account except to the extent that it -- that individual
3 person's money would not be in that account.

4 THE WITNESS: No. There would have been --

5 THE COURT: Just the funds money was.

6 THE WITNESS: The funds money would be --

7 THE COURT: Right.

8 THE WITNESS: -- in that account.

9 THE COURT: Okay.

10 BY MS. JARVIS:

11 Q. And is there currently funds in the investor fund account?

12 A. Yes. I believe there are.

13 Q. And are those funds subject to disputes between investors?

14 A. Yes, they are.

15 Q. And can you explain that.

16 A. The -- our --

17 Q. There are two objections that are on file by different
18 investors to the cash management motion.

19 One of them claims money out of the investor account as a
20 party that was going to acquire an assignment of a loan, the
21 other to claim money out of the investor account because they
22 had intended to assign the loan over, and there were some
23 bounced checks.

24 A. Sure.

25 Q. Can you explain a little bit about that background.

1 A. Right. And that's -- one of the things that happened at
2 USA Commercial Mortgage is that previous management allowed for
3 investors to trade out of various loans.

4 At the time of the filing, there were investors that had --
5 may have had a check in or out of the -- and may be investing
6 into USA Commercial Mortgage or trading out of one of the direct
7 loans.

8 Those -- some of those investors were caught at the time of
9 the filing where they have a -- where they either had a release
10 on their collateral and a check was being mailed to them, or in
11 the other case where some were investing into the account.

12 But one -- the one that we're speaking of directly is one
13 that was -- where the check was about to be paid, and it was
14 caught up in the data filing.

15 Q. Now, the cash management motion does not propose to use any
16 money from the investor account; is that correct?

17 A. That's correct.

18 Q. And that will remain? I mean, it is your intent that that
19 will remain in tact, pending further order of the Court.

20 A. That's correct. And, again, as we go through the circle
21 here, the -- the investors put money in through the investor
22 account as well as as we collected money, both principal and
23 interest, that should have been remitted to the investors as it
24 was collected.

25 Q. Now, you've created another account called the DIP

1 Operating Account; is that correct?

2 A. That's correct.

3 Q. And can you explain what that account is.

4 A. Essentially, the debtor-in-possession account takes our
5 collections and puts them into the debtor-in-possession
6 account.

7 Q. But the debtor-in-possession collection account is where
8 collections are made from the principal and interest of
9 borrowers; is that --

10 A. That's correct.

11 Q. And the operating of the account, the DIP operating
12 account, only -- is that only used for paying the operations of
13 the post-petition debtors?

14 A. That's correct.

15 Q. Okay. Now, has any money been moved from the collection
16 account to the operating account since the filing of bankruptcy?

17 A. From the operating account to the -- no.

18 Q. No. From -- yeah. From the collection account to the
19 operating account. And is it your understanding that
20 Commercial Mortgage has rights to certain fees that it can be
21 paid from the collection account?

22 A. That's correct.

23 Q. And is the cash management motion, does that propose only
24 to transfer those fees or those rights from the collection
25 account to the operating account for the debtors' use?

1 A. That's correct. What we're -- what we're proposing to do
2 is to use the loan-servicing fee as servicing agent to
3 administer this estate, and those -- we're entitled to several
4 categories of fees that would be -- that would be part of our --
5 what we plan to administer the estate with.

6 Those would be the revenues that we would use to
7 administer this estate, and those include administration fees
8 which are half to up to three percent per annum on each of the
9 loans.

10 So we -- we'd use those fees along with any fees that we
11 took which are late fees or if we have to renew a -- a
12 transaction. Those are fees that we would contemplate using to
13 -- to operate this estate.

14 Q. So other than the fees that Commercial Mortgage is
15 entitled to that you're asking to be transferred to the
16 operating account to use for operating these debtors, you are
17 not proposing to move or transfer any other amounts in the
18 collection accounts?

19 A. No, your Honor -- no, Ms. Jarvis. My intent is to keep
20 those moneys segregated as I become successful and bring back
21 delinquent interest and bring principal back into the estate.
22 We're segregating and identifying it by loan that's collected.

23 Q. So every amount that's collected you have accounted for
24 with respect to which loan it is attributable to and what
25 amounts were paid.

1 A. That's correct.

2 Q. I'd like to take you now through the budget that has been
3 attached to -- the revised budget to the cash management motion.

4 MS. JARVIS: And maybe I could also get this marked as
5 an exhibit. I'd like to have this marked as Exhibit 6 I believe
6 is where we're at.

7 THE CLERK: And what's the name of the document?

8 MS. JARVIS: (Indiscernible)?

9 THE CLERK: What is the name of the document?

10 MS. JARVIS: It's Revised Budget.

11 THE CLERK: Do you (indiscernible) to go out and make
12 copies of this, Ms. Jarvis?

13 MS. JARVIS: And I do have some extra copies, your
14 Honor. If you don't have your copy, would you like me to hand
15 one up?

16 THE COURT: Wasn't it attached to the reply? It must
17 have been.

18 MS. JARVIS: Yes. It -- well, it was attached to
19 Mr. Allison's supplemental declaration.

20 THE COURT: Oh. I don't see it in front of me, so if
21 you have an extra copy, that would be great.

22 (Colloquy not on the record.)

23 THE COURT: Oh. I do have it. Well -- I do have it.
24 Sorry. So if anybody else needs this, they could have it.

25 MS. JARVIS: I think it might be helpful simply to

1 walk through the categories on the budget and have
2 Mr. Allison explain what is involved in this budget.

3 BY MS. JARVIS:

4 Q. Mr. Allison, the first category is the loan origination
5 fees. Can you explain what is -- and this is on the revenue
6 side of what is being collected in this budget. Can you
7 explain what that --

8 A. Well, loan origination --

9 Q. -- entails.

10 A. -- fees, Ms. Jarvis, tied to the origination of new loans
11 along with collection and loan-closing fees and reimbursed
12 expenses from USA Capital Realty.

13 The loan-service collections are the estimated service fee
14 -- estimated service fees that we would collect along with any
15 outstanding loan origination and closing fees that we would
16 anticipate collecting.

17 The -- so moving through that -- essentially, maybe if we
18 looked --

19 Q. Let me ask you a question here. The debtor has not
20 originated any loans since the filing, has it?

21 A. That's correct.

22 Q. And so where do these loan origination fees come from?

23 A. They'll be -- well, first of all, we do have in our cash
24 flows in July that we would start originating new loans again.

25 We are -- one of the things that USA Commercial Mortgage is

1 experiencing is that there are people coming in, even with a
2 Chapter 11, and asking us to originate new loans.

3 And that's -- we're seeing that -- that from a business
4 standpoint, developers want -- want the product that we offer,
5 so we did put into this projection the ability to originate a
6 new -- new loans in the middle of July.

7 Q. Okay.

8 A. With respect --

9 Q. That also -- would you anticipate that if that occurs,
10 that would be subject to Court approval?

11 A. Yes, your Honor -- yes, Ms. Jarvis, and, also, it would be
12 subject to having a DIP financier involved because we would not
13 be sourcing funds from the public, but we'd be using a warehouse
14 credit facility from an institutional lender to provide us the
15 liquidity to make these loans.

16 Q. And would it also be subject to regulatory approval?

17 A. Yes, it would.

18 Q. And do you currently have a license to continue --

19 A. Yes, I do. I have a conditional license from the State to
20 continue in operation as long as I don't use individuals' money.
21 And to the extent that I originate loans and do it with
22 institutional money, I have a conditional approval from the
23 State to continue in business.

24 Q. Okay. Is the origination fees that are then indicated in
25 here, are these origination fees that may have come from either

1 loans originated prior to bankruptcy or projected in the future
2 if you are allowed to originate loans?

3 A. Yes. The loan origination fee on the top line would be new
4 loans that would be originated assuming that we'd have the
5 ability to -- the -- we'd -- that the Court would give us the
6 approval and -- for debtor-in-possession financing, the approval
7 to continue in business.

8 What we're doing is forecasting out by mid July that we
9 could continue to -- we could -- the debtor would be
10 rehabilitated in terms of books, records, and procedures, that
11 we could then continue on with the core business of the debtor
12 which would be to -- to continue to originate secured loan
13 transactions only through -- only sourcing them through --
14 sourcing the funds through a commercial lender.

15 Q. And there is the line item on -- you mentioned the
16 estimated-service fees. Can you explain why they're estimated.

17 A. Well, the -- the -- we're looking at our loan portfolio,
18 and, essentially, what I did was take our performing loans and
19 estimate that -- the amount of fees that we would generate off
20 of our performing loans to -- to -- to give us the fees to
21 continue to operate in our business.

22 I tried to build this projection in a very conservative
23 basis which doesn't take into account collecting the collection
24 of past-due principal or interest or the collection of -- of --
25 of late fees.

1 This is -- this projection was based on the collection of
2 -- of service fees from our performing portfolio.

3 Q. When you estimated the service fees, did you estimate it at
4 a one-percent servicing fee?

5 A. Yes.

6 Q. And that was despite the --

7 A. One percent per annum.

8 Q. But are there rights that Commercial Mortgage has with
9 respect to higher servicing fees with respect to serving the
10 investors?

11 A. Yes. We have the right to charge up to three percent per
12 annum on -- on -- on the vast majority of our loans.

13 Q. But you -- in making this conservative, you used only the
14 one percent.

15 A. Yes, Ms. Jarvis.

16 Q. Okay. And as you indicated, then, if your collections
17 improve as far as turning nonperforming loans into performing
18 loans, will the service fees that can be collected in this
19 budget also increase?

20 A. Yes. Oh. Again, if we look at the fact that 60 percent --
21 when you look at the fact that 60 percent of the loan portfolio
22 is nonperforming at this time to the extent that we're able to
23 -- through some focused discussions with the delinquent lenders
24 to get them performing again, that should definitely enhance the
25 -- the cash flow.

1 Q. And then with respect to the outstanding origination
2 extension and closing fees that you've included, these are fees
3 that -- it is your understanding -- are also allowed to
4 Commercial Mortgage?

5 A. That's correct.

6 Q. So all of these fees, again, are not -- they're simply
7 contractual rights that -- I mean, from your understanding,
8 what you've included in this budget was only property which
9 belongs to Commercial Mortgage under its contracts.

10 A. That's correct.

11 Q. With respect to the reimbursed expenses from USA Capital
12 Realty, can you explain that a little bit further.

13 A. Sure. USA Capital Realty is one of our debtor entities,
14 and we are entitled to a service fee from USA Capital Realty,
15 and that's -- that's how that fee is put in at \$120,000 in -- in
16 -- in the first week.

17 Q. Is it actually titled a management fee?

18 A. Yes, it is.

19 Q. And with respect to the management requirements, when this
20 talks about reimbursed expenses, was it -- is this reimbursed
21 expenses for fulfilling the management requirements of USA
22 Capital Realty?

23 A. That's right. That's a contractual obligation that USA
24 Capital Realty has with USA Commercial Mortgage.

25 Q. Okay. And are you collecting the entire amount of the

1 management fee that USA Capital Realty would be entitled to in
2 this budget?

3 A. No.

4 Q. Let's move to the disbursement side. Maybe you could just
5 quickly, so we can kind of run through this quickly, just
6 explain, generally, what the categories are in the disbursement
7 side as to what is included in this budget.

8 A. Very -- to -- to make -- to make this quick, sellers --
9 sellers and wages are \$85,000 paid every two weeks. Payroll and
10 payroll benefits are another 14.5 thousand dollars payable every
11 two weeks. In addition, once a month there's a health plan
12 that's \$11,000 for the employees. So those are the key focuses
13 of the budget.

14 Office operating disbursements have been running on
15 average \$10,000 a month, and the dreaded other category of
16 operating expenses, an amalgamation of various equipment leases
17 and insurance and -- and taxes that the debtor has to pay that
18 we -- we've done an analytic on the month -- on a week-by-week
19 basis.

20 Essentially, some of these payments we've made on a
21 monthly basis, but we've shown -- we've depicted it what we
22 think would be -- with the run rates week by week.

23 Q. Let me ask you about professional fees. You have a line
24 for professional fees in this budget; is that right?

25 Do you see that?

1 A. That's correct.

2 Q. Okay. Now, you are not asking for approval of any
3 professional fees in this as part of this cash management
4 motion, are you?

5 A. No. The intent here is to put a placeholder in for
6 professional fees.

7 Q. So this is just to do a cash flow to make sure that this --
8 the company would cash flow properly with these projected
9 expenses.

10 A. Well, the intent was to take it for the first -- first 90
11 days of the case and to make sure that the debtor had enough
12 money to operate given -- given the limited amount of -- given
13 what we're taking in as revenues from our -- from being the
14 servicing agent and collecting the fees from each of -- each
15 month on -- on the loans we service.

16 Q. And you understand, do you not, that no professional fees
17 can be paid unless the Court approves that?

18 A. I'm very well aware of that, Ms. Jarvis.

19 Q. There also are fees for post-petition financing. Do you
20 see that line?

21 A. Yes, I do. That's \$150,000.

22 Q. Now, again, are you -- you are not seeking approval to pay
23 that amount as part of this cash management motion, are you?

24 A. No, I'm not. It's a placeholder. We've been in
25 discussions with a -- a very significant lender from -- in -- in

1 this space. What they would want is a work fee to get to a
2 commitment as \$150,000, and I put that in as a placeholder.

3 Q. And so you understand, do you not, that nothing will be
4 paid out unless Court approval is obtained?

5 A. I agree. That is -- I thoroughly understand that, and,
6 again, this was to make sure that the estate could be able to
7 absorb the cost of -- of the work fee.

8 Q. Maybe you can explain why is it that you are looking at DIP
9 financing at this juncture.

10 A. There's three reasons. First, I'd like to have money. I'd
11 like to have funds reserved to enforce the delinquent loans.

12 To the extent that I have to aggressively seek collection
13 actions to collect the delinquent loans and bring them back and
14 recoup the money for our investors, I'd like to have liquidity
15 -- working capital liquidity to do that, to employ whatever
16 resources I need in terms of legal and other -- and other teams
17 I may need to recoup.

18 So that's the first part, is a working capital line. I may
19 not need it, but to the extent that I do, I wanted to have
20 incremental liquidity to -- to enforce the delinquent loans.

21 The second is there's \$65,000,000 of unfunded commitments
22 that exist on the loan portfolio at this date. To not fund
23 those -- in some instances, and I've reviewed several of them,
24 to not provide the incremental funding necessary to -- to -- to
25 finish out the projects could result in -- in damage to the

1 investors that have -- have started the projects out.

2 So to the extent that a project is up and we need -- we
3 need incremental moneys to finish a phase, we -- we've -- we've
4 been in discussion with several institutional lenders to provide
5 the liquidity to finish out the projects and protect the
6 investment -- the investors' investment in the stages that have
7 been already completed.

8 And then the final phase -- the final stage of
9 debtor-in-possession financing is to provide incremental
10 liquidity so that we can go out and originate new transactions
11 as the debtor rehabilitates himself.

12 Q. And from your -- I mean, in your opinion from -- as the
13 CEO, do you believe that this company can be reorganized?

14 A. Yes. I believe that there's a demand for this product,
15 Ms. Jarvis, the -- the product of providing the -- the -- the
16 first-tier money for land development and for -- for building
17 development.

18 The product has a demand. The product has a high yield to
19 it. And in my negotiations with -- with several of -- several
20 sophisticated lenders in New York, they've indicated a -- a
21 willingness to lend into the situation and provide what's called
22 a warehouse credit facility so that the debtor could be --
23 originate loans, collect its fee on the loan origination side,
24 and enjoy spread income between the amount that we would charge
25 the -- the underlying new transaction and what we'd pay to our

1 investors.

2 So there could be a rehabilitated entity that would be
3 viable and have a reasonable income, and it would be an -- and,
4 also, I think it would be a valuable economic entity to the
5 extent that I'm not successful in collecting these loans, that
6 there could be a distributive ownership to -- to the creditors
7 that haven't been paid in full.

8 Q. So you believe that maintaining the intrinsic value of this
9 company is important to the current investors?

10 A. Yes, I do, Ms. Jarvis. I think it's fundamental to
11 maximizing the recovery of this estate.

12 Q. Okay. And that value, then, would be available to
13 investors and creditors -- or, it's your intent to make that
14 value available to investors and creditors to, hopefully, get
15 them all paid in full; is that correct?

16 A. That's my intention, Ms. Jarvis, to get these creditors
17 paid -- investors paid in full.

18 Q. Let me ask you one other question about the sources of
19 cash. Are there ever potential sources of cash under
20 Commercial Mortgage's contractual rights that are not included
21 in this budget in the receipts?

22 A. There are -- there are the recoveries that we're seeking to
23 make. USA Commercial Mortgage has on its balance sheet over
24 \$50,000,000 of -- over -- it's a \$57,000,000 receivable from USA
25 Investment Partners.

1 I am in the process of negotiating with Mr. Milanowski who
2 is the CEO of US Investment Partners to secure my loan -- to
3 secure with properties that are in Investment Partners my
4 receivables so that as investment -- so by -- that would give me
5 a direct way to attach the properties, Investment Partners, that
6 could secure a loan, and then it could monetize it and recoup
7 the \$47,000,000 loan purse and the \$57,000,000 loan that exists
8 at Commercial Mortgage.

9 Q. So you intend to progress -- or, to aggressively pursue
10 collection of these debts that are due to Commercial Mortgage?

11 A. That's correct. And I'm -- and I've been in negotiations
12 with Mr. Milanowski. And at the -- at the present time, we've
13 exchanged security agreements, and we're in the process of
14 finalizing the collateralization of -- of those -- of specific
15 assets to secure this receivable.

16 Q. Let me ask you then. Now, we've gone through these kind of
17 line items. In putting this budget together, what did you
18 intend to accomplish with the expenditures that are included in
19 this budget, generally?

20 A. Well, my intent -- first of all, my intent in this budget
21 was to show the Court that the estate could be solvent during
22 the first 90 days of the case, and that the estate could
23 continue to fund -- fund itself from its -- from its
24 loan-servicing fees and other fees it's entitled to from -- from
25 its normal course of business.

1 Q. Okay. And what are the tasks that are -- when you
2 budgeted time in for professionals, for, you know, employees,
3 for yourself, and Mesirow, what tasks are you slated to
4 accomplish during this 90-day period?

5 A. Well, obviously there are a lot. If I can go through a
6 priority of tasks, and I also put Ray Quinney in as one of the
7 professionals that -- they were tasked with helping us out as
8 well as Mr. Schwartzer.

9 There is a lot of work here to -- to be done, and, you
10 know, we could go through, you know, a day between negotiations
11 with a delinquent lender and -- or delinquent borrower and say
12 listen, I need, you know -- what are the strategies we need to
13 foreclose on, I want my money, to -- to developing an
14 infrastructure within the company to effectively collect
15 interest and -- and have a focused collection effort to working
16 with Mr. -- to meeting with Mr. Milanowski to secure 47 -- to
17 secure my \$57,000,000 receivable that's due from Investment
18 Partners.

19 So the tasks at hand -- my -- my first and primary task is
20 to focus on the delinquent -- my -- my nonperforming loans and
21 turn them into -- either monetize them either through
22 foreclosure or forcing them to repay, but I want to monetize the
23 delinquent loans.

24 There's \$50,000,000 of interest that hasn't been
25 collected on a \$965,000,000 portfolio. That needs to stop, and

1 it -- because they're secure loans, we need to collect that
2 interest. And -- and there -- by the same token, there is
3 \$50,000,000 of principal payments that were not remitted to
4 investors that need to be collected and -- and put together.

5 So my initial -- my initial intent is to understand where
6 each investor is in terms of his position, whether he's been
7 overpaid, underpaid, and we've got a team of people sorting that
8 out as well as we have a team of people focused on putting the
9 books and records and statements and schedules -- statement of
10 financial affairs in proper order and then also working these
11 loans aggressively to get them into a performing state so that
12 we can monetize this -- monetize them as quickly as possible.

13 Q. In your review of these loans, is it your observation that
14 most investors or the majority of investors invested in more
15 than one loan?

16 A. Yes. I'd say the average is 2 to 3 loans with some
17 investors up to 20 loans.

18 Q. And so when you look at the number of investors you're
19 dealing with, if you separated them out, about how many
20 investors --

21 A. Well --

22 Q. -- would that be?

23 A. -- if we just -- let me just -- if I can go back and say
24 this. There's 3600 direct lenders that we -- if we're going
25 through the category.

1 If we look at the direct lenders at 3600, those 3600
2 direct lenders have, by average, invested in more than one
3 loan. When we looked at that, I think 1100 have just one loan
4 as the direct investment. The -- the balance of the 36 have
5 investments in multiple loans.

6 So as we go through and look at transaction by
7 transaction, we almost have to create a T account for each of
8 the loans the investor's involved with. So it's actually not
9 3600 investors. It's -- it's some multiple thereof, maybe two
10 to three to four times when we're touching an investor.

11 Q. So when you're creating, you know, the records to look at
12 what each investor has, you're actually dealing with more like
13 maybe 10,000 investors?

14 A. More than that. I think it's at least 10,000 times when --
15 when you go through it because the -- each investor has a
16 multiple of accounts that's one to two to three times, so it's
17 at least 10,000, if not more, Ms. Jarvis.

18 Q. Now, when you put together this budget, there are
19 potentially other -- as we talked about, for instance, on the
20 servicing fees. There's potentially taking more servicing fees.

21 Did you intend, in putting together this budget, to limit
22 the use of cash by Commercial Mortgage to only that what you
23 felt was necessary?

24 A. Yes.

25 Q. Let me ask you a little bit more about the overpayments,

1 and maybe you can just explain what you mean by some investors
2 that have been overpaid.

3 A. Thank you. That's an excellent point. It's -- I'm going
4 to go back to repeat something from earlier. USA Commercial
5 Mortgage paid every investor interest every month until we were
6 retained, and -- and the reason that I think we were all
7 retained is that they ran out of cash.

8 There's 4.2 million dollars of cash that they collected
9 from -- from the borrowers for March rents. The amount of
10 money that had to go out was \$9,000,000. They didn't have
11 money in the estate any -- to -- to make those interest
12 payments.

13 THE COURT: And just to be clear, when you mean
14 investors, you mean both direct lenders and fund members.

15 THE WITNESS: Yes.

16 THE COURT: Everybody received payments every month.

17 THE WITNESS: That's correct. So to the extent that
18 there wasn't enough money to pay them, then it became, well,
19 we're -- how long and how prevalent was the situation.

20 And, essentially, as in our investigation, some loans
21 hadn't paid interest in three years. You know, yet, they had
22 been -- yet, the investors had been receiving interest. In some
23 other cases the loan had been fully collected from the borrower,
24 and the collateral had been released.

25 So as we've gone through and have done our investigation,

1 we continue to refine our numbers as -- as these categories go
2 through.

3 But, essentially, what happened at USA Commercial
4 Mortgage is it paid -- it paid the investors interest
5 regardless of whether the underlying borrower paid the interest
6 to USA Commercial Mortgage, and it ran out of cash.

7 BY MS. JARVIS:

8 Q. So when you talk about being overpaid, you're talking
9 about an investor who was paid their interest even though there
10 was no interest collected on their underlying loan or the loan
11 that they had an interest in.

12 A. That's correct. The nonperforming -- I characterized the
13 loans as nonperforming as those loans that have not paid
14 interest.

15 Q. So --

16 A. So over 60 percent of the loan portfolio was -- was either
17 delinquent or hadn't paid interest in a long period of time.

18 Q. So when you look at this list that we looked at earlier
19 that had performing and nonperforming loans, are you saying
20 that everybody that had an interest in the nonperforming loan
21 was overpaid?

22 A. They were paid -- yes. They were paid interest when they
23 weren't entitled to -- the interest was never collected from the
24 underlying -- underlying lender.

25 Q. And where did the money come from that made those

1 overpayments? To what -- and, obviously, this is preliminary.
2 I know you're just starting to look at this, but from what you
3 know to date, where do you think the money came with -- from to
4 pay -- make these overpayments?

5 A. Your Honor -- Ms. Jarvis, as you go through it there --
6 there are two numbers that have almost a direct correlation to
7 them, the amount of interest that's delinquent from the
8 borrower -- from our borrowers which is about \$49,000,000 and
9 the amount of principal that was collected of \$50,000,000 and
10 not remitted to the investors. It's almost a one-to-one ratio.

11 And, essentially, what happened, at some point in time
12 previous management starting diverting principal payment --
13 principal payments from investors as they were collected,
14 continued to pay them interest on the loan, but used the
15 proceeds from the release of collateral to continue to fund the
16 business.

17 Q. So are there some amounts of notes or loans for which
18 they've been completely paid off and there have been collateral
19 releases?

20 A. Yes.

21 Q. And how much is that?

22 A. It -- in our investigation at this point, it indicates it's
23 about \$18,000,000 of principal that was collected from various
24 borrowers, security liens that had been released, and those
25 moneys not released to -- not returned to the investors that

1 were rightfully entitled to receive those moneys.

2 Q. So with respect to those lenders as opposed to the group
3 that have been overpaid, those lenders would have been
4 underpaid.

5 A. That's correct.

6 Q. And you currently, then, would not have an interest in a
7 secured mortgage; is that correct?

8 A. That's correct. The collateral has been released.

9 Q. Okay. Were there also partial releases of collateral?

10 A. Yes, there were. There was approximately \$32,000,000 of
11 partial releases of collateral where the -- the loan continued
12 to either be a performing loan or a nonperforming loan, both
13 categories, where security -- where various stages of
14 development of the project where they -- where management
15 allowed for the release of a part of the security that was under
16 the project.

17 And the security was -- the principal was paid to USA
18 Commercial Mortgage, not remitted to its proper investors, and
19 the security interest in that partial -- in that development was
20 -- was released.

21 Q. And is it your intent, then, to also rectify these
22 problems in making sure that these investors get paid in full?

23 A. Yes.

24 Q. And you're looking at a variety of possibilities with
25 respect to generating enough money to make sure that these

1 investors as well are paid; is that correct?

2 A. That's -- that's correct. And -- and why I'm going
3 through -- since there -- there are ongoing projects that may
4 need -- may need incremental funding or may need -- or where
5 there's an -- the importance is that some of these projects are
6 -- there's an interdependency from Loan A to Loan B to Loan C.

7 Several developers have multiple loans. Some of the loans
8 are in the position where they're perform -- one -- I met with
9 one where he has a performing loan.

10 He has a loan that needs an incremental \$6,000,000 to
11 finish off the project. He has another loan that -- that I know
12 that we've partially released collateral behind, but he wants --
13 he's looking for a global solution.

14 So to the extent that it's important that we keep the
15 loans together because in order to negotiate a successful
16 settlement and monetize to -- to get the best result for the
17 investors I have to treat that borrower, even though he
18 has -- there's discreet notes that are out there, I'm treating
19 that borrower -- he needs certain things from USA Commercial
20 Mortgage, and we need things from him. So in order to maximize
21 value, we're -- we're looking at global workouts.

22 Q. Was it also some of Commercial Mortgage's own money that
23 went to overpay investors?

24 A. Yes. They diverted -- they, essentially, took their cash
25 that would have been used for their servicing fees and -- and

1 diverted their own capital into continuing operations by
2 continue -- they continued -- USA Commercial Mortgage exhausted
3 its own capital, its own loan-servicing fees in the payment of
4 the interest to the investors.

5 Q. And have you and your staff looked at the various loans, to
6 the extent there was information provided, of the objectors to
7 this motion?

8 A. Yes, I have.

9 Q. And with respect to those objectors, in your review of the
10 loans that they are into, are there any of them that are not in
11 at least one nonperforming loan?

12 A. No. As I went through the list of all the objectors, they
13 at least have one or more than one nonperforming loan in -- that
14 -- where we would have overpaid them interest for some period of
15 time or paid them interest they weren't entitled to for some
16 period of time.

17 Q. Okay. With respect to these loans, on average, how many --
18 do you know how many lenders or direct or fund lenders there are
19 on average in each individual loan?

20 A. The average should be 2- to 300 investors per transaction.
21 Some had up to 4- to 500, but the majority had 2- to 300
22 investors, which would include -- which may include Commercial
23 Mortgage, either of the two funds, or Realty Advisors or
24 Investment Partners as a -- as a direct investor.

25 Q. And what problems will be created for the 200, 300

1 investors if one investor could break off -- I mean, if it was
2 even allowed -- with respect to collection problems?

3 A. It would be chaos. What we're trying to do is -- if we go
4 through and -- and look at the interdependence of each of these
5 loans and look at the solution of restructuring this loan
6 portfolio and maximizing its value, if we were to allow one
7 investor to break off, utter chaos would occur.

8 We would not be able to effectively act as agent to go
9 back in and restructure these loans and monetize them on a
10 prudent basis.

11 Q. And if you do not receive approval for the cash management
12 motion today and the budget, what would be the result?

13 A. This estate wouldn't be able to survive. The -- the -- if
14 we weren't able to operate the company as we've outlined, it
15 would be very difficult for this debtor to reorganize himself --
16 or, itself, and we'd be facing a -- I think we'd be facing a --
17 very dire consequences for the investors.

18 Q. And is there anything else you think that is relevant for
19 the Court to know with respect to the approval of this cash
20 management motion?

21 A. The only thing I would implore is that as we look at the
22 loans, and we look at where there -- there at their secured
23 loans, they -- the underlying properties there, we've -- we've
24 engaged an appraisal firm subject to Court approval.

25 We're going to be marking and evaluating the proposal --

1 the value of the loans and marking them to where they're at
2 currently in terms of the value of the underlying assets that
3 secure those loans.

4 If we have the time to do a workout strategy and look at
5 the loans as a -- as a bank would and as a workout officer
6 would, we should be able to maximize the recovery for all
7 investors.

8 If we take this and -- and tear it apart and look at it
9 fractionally as each one investor having its individual right,
10 we won't have the ability to to -- to employ strategies to
11 maximize the value for the entire estate and return a -- return
12 investors money on a -- maximize the return to all investors.

13 Q. And as a former bank officer, you've done this kind of
14 work before with respect to portfolios; is that correct?

15 A. That's correct. I've done it with portfolios as a bank
16 officer, and I've done it subsequently as a CRO for some major
17 companies, including Com Disco (phonetic) which had a
18 \$12,000,000,000 lease portfolio spread around -- spread around
19 the world and -- and monetizing that portfolio for its
20 investors, and the result there was we got 100 percent of the
21 investment back for -- for the creditors and -- and even got a
22 dividend for equity.

23 MS. JARVIS: That's all I have, your Honor.

24 THE COURT: Okay. Cross? I mean, are there any
25 other questions?

1 MR. SCHWARTZER: May I approach the witness?

2 THE COURT: Yes.

3 THE CLERK: Oh, there is water (indiscernible).

4 THE WITNESS: Oh, thank you. Thank you.

5 MR. LEPOME: You said I could cross, your Honor?

6 THE COURT: Yes.

7 CROSS-EXAMINATION

8 BY MR. LEPOME:

9 Q. Attorney Robert Lepome. I represent a dozen we'll call
10 them groups, either they're married or friends, what have you,
11 many millions of dollars that I'm representing here, and I have
12 a number of questions. I may know the answer, and I think you
13 know the answer to many of them, but they wanted me to voice
14 them.

15 First of all, why have you made an appraisal on the
16 performing loans?

17 A. The -- as I'm looking at a loan portfolio, there are
18 several loans -- there are several investors -- or,
19 several -- excuse me -- several of the borrowers have multiple
20 loans.

21 (Colloquy not on the record.)

22 THE WITNESS: And to the extent that I am looking at
23 an interdependence where there may be a greater value in one
24 loan than in others and -- or I need to get the workout done, I
25 need to have an idea to appraise all -- each transaction to have

1 a good idea where it's at, and several of the performing loans
2 are on my watch list, and they may be running out of interest
3 reserve shortly.

4 So to the extent that I need to look at where they're at is
5 in case they run out of interest reserve, I need to be able to
6 protect my downside and understand where my values are so I can
7 formulate an effective strategy to -- to deal with each of the
8 -- the borrowers.

9 Q. All right. Another question is with regard to
10 Mr. Milanowski and other insiders, are they provided personal
11 guarantees. Did you view those?

12 A. There are -- Mr. Milanowski and Mr. Hantges provided
13 multiple personal guarantees.

14 Q. And now I'll ask you another question. In the event you
15 get an appraisal which is less than the actual loan amount, how
16 do you intend to proceed?

17 A. It depends if it's a performing loan or a nonperforming
18 loan, but to the extent that I -- I know -- I have to know
19 where my collateral is at and what the value of the loan is at
20 the -- at that time.

21 The fact is that some of the loans -- if the loan may not
22 be fully secured, then I plan to advise the people that are in
23 that note of the status of each of these loans.

24 Q. All right. I'll just -- I have to ask this in a nondirect
25 way. In Imperial and many others that I've been involved with,

1 I've tried to convince the people in your shoes to do the
2 appraisals and then to bid the appraised amount in the event of
3 foreclosure so that they would comply with Nevada's deficiency
4 statute. Are you familiar with the statute?

5 A. Yes.

6 Q. Do you intend to do that?

7 A. Yes.

8 Q. Because in Imperial and all the others, they bid the full
9 amount on the loan, thereby, releasing the individuals, because
10 when you get the collateral -- and it's deemed to be the full
11 payment on the loan. Are you familiar with that?

12 A. Yeah.

13 Q. All right. You mentioned certain people, investors who
14 were underpaid and overpaid. Isn't it true that in order to
15 really determine whether someone's underpaid or overpaid you
16 have to look at the underlying value and see how a loan works
17 out in the end?

18 A. What we have to do -- and that's really what we're asking
19 for time from the Court to look at each of the loans, the -- the
20 progress that we're -- we intend to make by June 15th.

21 When we interviewed the appraisal firms, I wanted all of
22 our loans appraised in the next 30 days so that I could have
23 that information available by June 15th and -- and along with an
24 understanding of the position of each individual investor in its
25 -- in his various loans.

1 Q. Okay. Also with regard to an overpaid or underpaid
2 situation as denominated by yourself, these individuals might
3 owe money to another investor, not to US Capital. Is that a
4 fair statement?

5 A. The --

6 Q. In other words, they got other investors' money. They
7 didn't get any money from the --

8 A. Well, USA Commercial Mortgage was the -- was the group
9 that overpaid, that -- that paid the interest, and US -- the USA
10 Commercial Mortgage was the -- what made the decision to pay an
11 investor interest when it didn't collect the interest on the
12 underlying loan.

13 Q. From which account did they make this payment?

14 A. They made the payment from their disbursement account.

15 Q. Not from the collection --

16 A. I mean from the collection account. Excuse me.

17 Q. That's what I meant, the collection account. So where'd
18 they get the money from the collection account?

19 A. From the underlying borrowers or what they funded into it.

20 Q. Okay. So if we follow the money, it wasn't the debtors'
21 money, was it? It was the borrowers' money.

22 MR. MEROLA: Objection. It calls for a legal
23 conclusion.

24 THE COURT: Sustained. And this really goes beyond
25 where we need to be today. I mean, that's going to be --

1 MR. LEPOME: All right.

2 THE COURT: -- an issue. I'm sure it's going to be
3 facing us at some point.

4 MR. LEPOME: Thank you, your Honor.

5 BY MR. LEPOME:

6 Q. There have been a couple of documents filed in the case. I
7 want to see if you were familiar with them. One of them was
8 Document No. 116, an affidavit of Mark Gross (phonetic), and
9 it's very, very, very short, and I'll read it.

10 "I'm the president of USA Loan Services. USA Loan
11 Services has no connection, whatsoever, with the debtor.

12 US Loan Services has the ability to service the existing
13 107 loans of USA Capital and its subsidiary company and can
14 assimilate them into our 4500-loan portfolio without difficulty,
15 although, we may wish to interview one individual in the
16 collection department of USA Capital for a potential position
17 with our firm.

18 I cannot imagine how anyone can justify more than five
19 employees at USA Capital, much less 32 employees."

20 How do you respond to that?

21 Q. I -- I'm not familiar with the individual, and I'm not
22 sure how he could come to the conclusion without understanding
23 our company.

24 Q. Okay. This company that I've referred to took over
25 Globals (phonetic) and many other failed institutions just like

1 this, took over their loan portfolio.

2 MR. MEROLA: Objection.

3 MR. LEPOME: Why did --

4 MR. MEROLA: Hearsay. Assumes facts not in
5 evidence.

6 MS. CARLYON: And relevance.

7 THE COURT: Sustained.

8 MR. LEPOME: I'll represent to the Court that the
9 individual can say that --

10 THE COURT: Well --

11 MR. LEPOME: -- and can -- if he were --

12 THE COURT: -- sustained.

13 MR. LEPOME: -- here in court today.

14 THE COURT: You can't do that.

15 MR. LEPOME: Thank you, your Honor.

16 BY MR. LEPOME:

17 Q. I'll ask a different question. Why does it take 32 people
18 to -- of the old and of the present employees, why does it take
19 32 people to continue on salary?

20 A. The -- each of the 32 people are working in -- between a --
21 in employee accounting. Our computer service department are --
22 are critical to the operation of the company.

23 I went through and I've already terminated the brokers.

24 I've terminated certain people in IT. I've been -- I cut back
25 on the employees since I've been there.

1 I'll continue to look at -- look at the employee level and
2 the head count, but the current head count is -- is working in
3 providing valuable service to the debtor at the moment.

4 Q. Your preliminary budget that you provided was that over 13
5 weeks it would require, approximately, 4.3 million dollars. Is
6 that still your estimate?

7 A. Yes.

8 Q. Have you been able to reduce that in view of the progress
9 you've made that in some aspects would require six weeks, but
10 you've been able to do it in three weeks?

11 A. It's -- it's my estimate as to where I believe the -- the
12 estate's going to be today. We're continuing to work hard, and
13 this is an estimate.

14 We're two-and-a-half weeks into the case. We've been
15 working at a -- at a fever pitch to -- to accomplish a variety
16 of different fronts which includes loan collection, sorting out
17 where each of the loans are, categorizing properly.

18 So we are -- we are fully deploying our people to -- and
19 focusing them on loan collection, to put the systems in place so
20 we have an infrastructure and have a debtor that we can
21 reorganize.

22 Q. The last thing my clients wanted to know, on these
23 appraisals, have you sought to get a competitive price from
24 each appraiser?

25 A. Yes.

1 MR. LEPOME: We have no more -- no further questions.

2 THE COURT: Okay. Thank you. Anyone else?

3 CROSS-EXAMINATION

4 BY MR. GORDON:

5 Q. Mr. Allison, I appreciate the effort that was done in the
6 last couple weeks with regard to the budget. It is
7 substantially different than what was previously presented and
8 much more defined.

9 I just want to make -- understand very clearly with regard
10 to the budget that you are basically estimating for the 13 weeks
11 that based on your projected income versus the projected
12 expenses for the administrative period, that you're going to
13 show a net of, approximately, \$123,000. That's what you're
14 projecting.

15 A. That's correct.

16 Q. So you're showing that the operations during this period of
17 time from an administrative standpoint will be positive and not
18 negative.

19 A. That's correct.

20 Q. Okay. And with regard to the estimated-service fees, am I
21 correct that when you testified, you stated those were from
22 performing loans only that you anticipated that would be
23 received?

24 A. That's correct.

25 Q. Okay. Do you have that document in front of you?

1 A. Yes.

2 Q. If you'll go to the second page of that exhibit.

3 THE COURT: Which exhibit? Which number?

4 MR. GORDON: I'm sorry. This would be the
5 budget.

6 THE COURT: The budget.

7 MR. GORDON: The 13-week.

8 THE COURT: Okay. Thank you.

9 BY MR. GORDON:

10 Q. You show on the second page certain items. I ask you to
11 look at collections and disbursements for trust and funds, and
12 you show estimated interest collections for USA CRA. Can you
13 tell me what that is, just for the record.

14 A. That's USA Commercial Realty.

15 Q. And that's estimated -- what do you mean estimated
16 interest collections?

17 A. Those are estimated collections. Potentially, they could
18 come in from -- for that particular -- where they're in -- where
19 CRA has an investment.

20 Q. Okay. And then the next one you have is USA CMC. That
21 would be the same?

22 A. That's correct.

23 Q. And then you show estimated collections for DTEF, and
24 that's the Diversified Fund.

25 A. That's correct.

1 Q. And you're showing total collections of interest
2 collections during the 13-week period of 2,417,000.

3 A. That's correct.

4 Q. And the next item you show is First Trust Fund, and you
5 show 1,157,000.

6 A. That's correct.

7 Q. Okay. And the final item there is others, and what would
8 be for -- what do you mean by others? Can you define that for
9 us.

10 A. They -- those are the investors.

11 Q. Those are the direct lenders.

12 A. Right.

13 Q. Okay. And that's 16,424,000.

14 A. Correct.

15 Q. Okay. And going down the page, you show cash balance --
16 or, cash positions trust account, and the trust account is what
17 you're referring to as that account where the payments are going
18 to go from the various borrowers on the loans; is that correct?

19 A. Yes.

20 Q. And you show cash balance DTDF. That would be the
21 Diversified Trust?

22 A. Correct.

23 Q. And over the 13 weeks you show -- well, there's no total
24 balance that I don't show here, but you're showing collections
25 during that period of time; is that correct?

1 A. The Diversified Trust -- the cash balance Diversified
2 Trust Fund is 829 on Week 1. There are management fees that are
3 -- that are -- Diversified Trust Fund is paying to Commercial
4 Mortgage for its loan service --

5 Q. Correct.

6 A. -- under its loan servicing contract.

7 Q. And so what does Week 2 show, the 723? How does that
8 relate to the 829?

9 A. That -- that's a reduction. That shows the loan service
10 fee that would be paid.

11 Q. So at the end of the period 07/30/2006, there would be
12 512,000 in that account.

13 A. That's correct.

14 Q. Okay. And --

15 A. That's assuming that -- that all the loans stay static. We
16 don't recover any additional loans.

17 Q. Correct. I understand that. And the cash balance
18 collections trust, at the end of the 07/30 you're showing
19 \$99,568,900; is that correct?

20 A. That's correct.

21 Q. And what does that represent?

22 A. That's cash -- that's -- that's the collection of both
23 principal and interest that we've collected in the account.

24 Q. Okay. And the next item, cash balance Investors Trust,
25 1,877,000 at the end, what does that represent?

1 A. That's -- that -- as you can see, that line stays static
2 throughout and --

3 Q. Right.

4 A. -- that's the -- that's the -- that's the balance in
5 Investors Trust.

6 Q. Okay. Are you showing on this budget any distributions of
7 collections on any of these loans to any of the direct lenders
8 or the funds as direct lenders?

9 A. No, not on this budget.

10 Q. Okay.

11 A. This is -- this budget was meant to be a placeholder and
12 not to show distributions. Those will be subject to the Court
13 approval.

14 Q. Do you anticipate during this period of time seeking Court
15 approval to make distributions?

16 A. Potentially, yes. I would -- as soon as we can get things
17 sorted out, and when we get the statement of schedules put --
18 put together on June 15th, hopefully, we can get -- get --
19 resume interest payments once we have an agreement of the
20 interrelationship of -- of various -- various investors.

21 Q. And that would include principal payments also to --

22 A. Yeah.

23 Q. -- the extent that their performing loan's being paid off.

24 A. Yes. Or to the extent that collected on delinquent loans
25 which aren't contemplated in this, and -- and have -- and being

1 able to collect them and pay them off.

2 Q. I understand. And I believe two weeks ago the Court
3 basically stated if you intend to keep the funds, bring the
4 motion on. Do you remember that admonition from the Court?

5 A. Yes.

6 Q. And you understand that admonition?

7 A. Yes, I do. And, again, the intent of this budget is -- is
8 to show that we can -- that, you know, what our operation is
9 going to be in terms of collecting -- collecting the investors'
10 money, both principal and interest, as well as the fact that we
11 can survive on our own service fees.

12 Q. Okay. You testified earlier and I -- it's illuded to in
13 the pleadings you filed yesterday, last evening, the --
14 concerning the \$57,000,000, the approximate sum owed from USA
15 Investment Partners. Have you been able to determine what the
16 source of those funds were that were lent?

17 A. No. It's one of the things that we're tracing. What I did
18 is, you know, we actually -- the receivable one, we looked at it
19 on the books at March -- to be clear, it's a work in progress.

20 When we saw the receivable as of March 31st, it was
21 \$47,000,000. And as my team has been in working and trying to
22 trace the number, we got -- it's now up to \$57,000,000.

23 And I can tell you it's still a work in process, but my
24 intent is to try and find more than enough -- I want to try and
25 collateralize that -- that receivable with more than a

1 one-to-one security interest so that I have some certainty that
2 -- that this debtor is going to be able to capture the moneys
3 that -- that were -- that we'll be able to capture the moneys
4 for Investment Partners.

5 Q. Are you looking into what the sources, have any idea,
6 because, obviously, the 57,000,000 seems a bit -- a very high
7 number for this type of company to generate and then lend.

8 A. I -- I -- I thoroughly agree, and we're -- it's under
9 investigation.

10 Q. Finally, there was statements made by counsel at the last
11 hearing that at the time that -- the commencement of the
12 bankruptcy there was approximately 12,000,000 which would have
13 been in the trust account at that time, moneys available.

14 Can you clarify that or expand on that or --

15 A. Well, the \$12,000,000 that was in the account was a
16 variety of different -- was basically an amalgamation of all the
17 cash that had been collected, and what we've tried to do is
18 refine -- and part of these numbers is to refine where the
19 moneys were at and -- and -- and -- on line and form.

20 Q. Well --

21 A. And we'll continue to do that. And as we continue to
22 collect money, we're actually segregating it by loan. You
23 know, for example, a loan that paid off last week, we've got
24 both principal and interest segregated.

25 Q. Was that a performing loan?

1 A. No. It was a (indiscernible).

2 MR. GORDON: Thank you.

3 THE COURT: Okay. Anything else?

4 (Colloquy not on the record.)

5 CROSS-EXAMINATION

6 BY MR. MICHAELSON:

7 Q. Mr. Allison, I'm Jay Michaelson. I represent a number of
8 direct lenders. I'm still confused about the service fees and
9 what use is going to be made of those.

10 To better illustrate that, why don't we set up a
11 hypothetical. Let's say that there is a loan, \$10,000,000,
12 performing, and so that on May 1st -- and interest is
13 12 percent, so that on May 1st, \$100,000 came in and went into
14 your DIP account.

15 What is your understanding of the service fees to which USA
16 Commercial Capital is -- or, Commercial Mortgage is entitled to?

17 A. It -- it -- depending upon your -- depending upon the
18 loan, there's a one-percent per-annum loan-service fee. For
19 example, a loan may be at -- the -- the borrower may be paying
20 to USA Commercial Mortgage an interest rate of 13 percent. The
21 note is at 12 percent that the investors have.

22 The difference being -- between the two is the loan-service
23 fee that -- that USA Commercial Mortgage has in administering
24 that loan. That's a one-percent per-annum fee.

25 Q. Do all of the loans, as far as you know, have a one-percent

1 annual fee?

2 A. The -- all of the loans have varying fees to them, and
3 they had subsequently been modified, and we have the right to
4 charge, in many instances, up to three percent.

5 Q. All right. Well, let's assume that it's a one-percent
6 annual fee, and this \$100,000 comes in on May 1st. Does your
7 budget contemplate taking that fee in advance?

8 A. I'm not sure I understand your point.

9 Q. Well, it's an annual fee.

10 A. No. It's a fee that's collected. It's -- it's part of
11 the -- the one percent would be collected on -- it -- on a
12 monthly basis.

13 Q. Okay. So --

14 A. So, for example, if -- if the loan -- if the fee is -- if
15 the interest rate the borrower is paying is 13 percent per month
16 -- or, 13 percent per annum -- and let's do it in 12s. It's
17 easier.

18 That means if we do it at 12 percent and 11 percent is
19 remitted to -- 11 percent is remitted to the investors, and the
20 investors have an 11-percent note, there's one percent per
21 annum, and that one percent's paid monthly. That one -- that
22 one percent divided by 12 is paid monthly. So we're getting
23 one-twelfth each month of that one percent.

24 Q. Okay. So that I could ensure my client who has a direct
25 loan, a fractional interest in this note and deed of trust, that

1 when that \$100,000 comes in on May 1st for interest, that, at
2 most, you're going to be taking your one percent monthly fee --

3 A. Right.

4 Q. -- annualized.

5 A. It's --

6 Q. Is that correct?

7 A. -- an annualized fee, not one percent per month. It's one
8 percent per annum.

9 Q. Okay.

10 A. So, essentially, one-twelfth would be taken each month, not
11 one percent each month.

12 Q. That clarifies it. The other concern -- now, I do
13 represent multiple clients, and as you've pointed out, many of
14 those clients have multiple investments. Some of them -- I've
15 just reviewed it quickly, some performing, some are
16 nonperforming.

17 In order to properly advise my client, and I'm sure every
18 other counsel in this courtroom has the same problem, the most
19 important thing we need to know, at least initially, is what is
20 the status -- a specific status of a loan.

21 For example, you say there are performing loans that are --
22 there is an interest reserve. So that's a specific fact and,
23 you know, that we would like to know. There are loans, as
24 you've indicated, where the principal has been paid off.

25 So it sounds like you've developed a tremendous amount of

1 information with regard to these loans. Is that a fair
2 statement?

3 A. That's correct.

4 Q. Are you in a position to, at least preliminarily, release
5 that information to these direct lenders so that we can better
6 advise our clients about their rights?

7 A. Well, actually, what we've put on the -- we've put
8 the -- Exhibit A is on the Web site as of today so that
9 each -- so that people would understand whether they're in a
10 performing or nonperforming loan.

11 Q. That's the first step, of course.

12 A. Right. And as we continue to refine down each of the
13 positions, we'll be in communication with the investors under
14 each of those loans.

15 The reason that it -- that it's premature to do that,
16 again, when we started looking at loans that are secured versus
17 unsecured -- or, we found two loans that are unsecured thus far
18 in the portfolio that were supposed to be secured loans.

19 We -- we initially found \$12,000,000 of -- of principal
20 that was unremitted where the liens have been fully released.
21 We're now up to \$18,000,000.

22 Now, in two-and-a-half weeks, while we've developed a fair
23 body of knowledge, it's still a work in progress. Excuse me.

24 We're still -- we're still developing a fact base, and
25 what I'm trying to do is not -- as we discussed earlier, is

1 it's -- is we're continuing to learn facts. It's premature to
2 -- to tell -- tell an investor this is your final position
3 because we're still learning what the true position is.

4 Q. Well, if a loan is unsecured, it wouldn't be premature to
5 tell those lenders that they don't have any collateral.

6 A. True.

7 Q. Okay. And that's what we're really looking for, is as
8 much information as quickly as we possibly --

9 A. And in my view and -- and to reemphasize what I've told
10 anybody that I've talked to, and I've talked to several direct
11 investors, as many as I possibly can in the -- in the past two
12 half weeks, and the phones have been overwhelming.

13 We -- our call center's had over 1,000 calls each week
14 from -- to BMC, and people have been innovative enough to get my
15 cell phone number.

16 And, you know, we'll share information as it becomes
17 available, but I just am hesitant to share information that --
18 that's not -- that's partial information.

19 Q. What is your cell phone number?

20 A. If you wouldn't mind telling me yours first.

21 Q. No. But I think probably just for your benefit, wouldn't
22 it make sense to release as much and specific information as you
23 can as you -- or, as you get it to reduce the burden on your
24 staff?

25 A. It's -- it's our intention to do so, and I just want to

1 emphasize that we're neutral. We're on this as transparent as
2 humanly possible as we continue to mail -- to amass and
3 understand facts.

4 We have been -- and -- and what's new is a creditors'
5 committee -- or, an investor committee is informed. We'll be
6 communicating with them.

7 We're going to continue to use the Web site to post
8 information weekly. We've tried to put newsletters and
9 information on the Web site each week and continue to find ways
10 to channel a communication path to the investors.

11 Again, as we're -- as we go through the strategy of
12 collecting loans and going through the transaction of recouping
13 these investments, recovering the -- the nonperforming loans and
14 getting them performing and getting them paid again, we'll be
15 sharing that information as -- as quickly as humanly possible.

16 Q. And going back to our little hypothetical in terms of the
17 interest that comes in on a performing loan, it is my
18 understanding that other than the one-percent fee which you're
19 taking out on a monthly basis, the balance of those funds will
20 be held until there's a determination by this Court as to who's
21 entitled to those funds; is that correct?

22 A. That's correct.

23 MR. MICHAELSON: Okay. That's all I have. Thank
24 you, your Honor.

25 THE COURT: All right. Anyone else?

1 MS. CARYLON: (Indiscernible).

2 CROSS-EXAMINATION

3 BY MS. CARLYON:

4 Q. Mr. Allison, I just have a couple of questions with regard
5 to the motion for final approval of the Wells Fargo
6 stipulation. There have been a couple of documents filed
7 framed as objections, but I think they're more concerns as to
8 the background.

9 Pre-petition, the debtor, USA, had several accounts at
10 Wells Fargo; is that correct?

11 A. That's correct.

12 Q. They had separately investor trust accounts, a collection
13 account, and an operating account; is that correct?

14 A. I believe so.

15 Q. And post-petition you have transferred these accounts to
16 Bank of America; is that correct?

17 A. That's correct.

18 Q. And the setoff authorized on an interim basis by this
19 Court was exercised against the operating account. Is that
20 consistent with your understanding?

21 A. I believe that's correct.

22 Q. And the balance of the funds, including all of the funds in
23 the investor trust account, were transferred at your direction
24 to Bank of America; is that correct?

25 A. That's correct.

1 Q. And as a courtesy to the debtor, Wells Fargo has kept the
2 collection account opened for receipts; is that correct?

3 A. Yes.

4 Q. And that's because it's essentially a lockbox arrangement
5 into which payments are automatically credited --

6 A. That's correct.

7 Q. -- is that correct? And Wells Fargo has, on an interim
8 basis, arranged to wire those funds to Bank of America as they
9 come in; is that correct?

10 A. Yes.

11 Q. And then I assume that as you have the opportunity to do
12 so, you will give payment information for the new Bank of
13 America account to those borrowers; is that correct?

14 A. That's correct.

15 MS. CARLYON: Thank you. I have nothing further.

16 THE COURT: Okay.

17 CROSS-EXAMINATION

18 BY MR. MEROLA:

19 Q. Mr. Allison, because it's going to come up eventually and
20 someone will try to use it against one of us, you and I know
21 each other; is that correct?

22 A. That's correct, Mr. Merola.

23 Q. And you're a member of the Turn Around Management
24 Association (phonetic); is that correct?

25 A. I'm a former chairman of the Turn Around Management

1 Association.

2 Q. And I have served on the board of directors of the Turn
3 Around Management Association with you when you were chairman
4 and with you as another director.

5 A. Yes, that's correct.

6 Q. And we've known each other about 15 years; is that --

7 A. Yes.

8 Q. -- correct?

9 A. That is correct.

10 Q. And we've worked together, I think, once.

11 A. It's -- that's also correct.

12 Q. Okay.

13 A. That was when I had darker hair, too.

14 Q. And I was much thinner. Sitting through the presentation
15 today, I'm left with the conclusion that you seem to think that
16 these debtors are more interrelated than most people think; is
17 that correct?

18 A. Yes. There's a -- there's a definite interrelation as we
19 go through -- what -- what's not visible readily for -- that one
20 borrow -- one developer may have multiple loans. And -- and in
21 -- in doing a workout strategy, when I'm in talking to one
22 individual, I'm not talking about just Loan A. I'm talking
23 about his entire portfolio loans. There's that interdependency.

24 There's also the interdependency with respect to the
25 investors. The investors are in multiple loans, and,

1 unfortunately, what previous management did was create a series
2 of debtor and creditor relationships that exist between USA
3 Commercial Mortgage where we've over -- we've paid interest that
4 we haven't collected to some investors, and we have not remitted
5 proceeds from principal payments to other investors.

6 So we have a very complex series of transactions that
7 exist both on the -- on the loan side as well as on the
8 investor side.

9 Q. But the real genesis of this interrelationship between
10 these entities is the fact that there is one portfolio of
11 loans; is that correct?

12 A. That's correct.

13 Q. And so regardless of whether you're a direct lender or a
14 fund member, you have a fractional interest of some kind -- and
15 let's not put on the legal niceties -- in the same 115 loans.

16 A. That's correct.

17 Q. And the primary objective you've articulated on behalf of
18 the debtor in possession is to maximize the value and get
19 control of those 115 loans.

20 A. Yes. That's my intention.

21 Q. And there are going to be conflicts between investors, if
22 nothing else, in terms of priorities about what you try to fix
23 first; is that correct?

24 A. That's correct as well.

25 Q. Based on your initial analysis, does it appear that those

1 conflicts are between investors in different guises or is it
2 entity to entity at this point?

3 A. The way I look at the -- Mr. Merola, if I can look at this
4 very straight forward, there are 114 loans in this portfolio.
5 The ultimate recovery from First Trust Deed Fund, Diversified
6 Trust Deed Fund, and the direct investors comes from the
7 maximization of that portfolio.

8 The conflicts -- the first and foremost thing we have to do
9 is look at the loan portfolio itself and maximize its value. By
10 maximizing it's value, we're going to maximize the recovery to
11 First Trust Deed Fund, Diversified Trust Deed Fund, and the
12 direct investors.

13 Q. There are going to be situations where a direct lender
14 wants a result, and the same person is also a fund member that
15 wants a different result.

16 A. That potentially could happen.

17 Q. And rather than talking about individual investors and
18 individual loans, you're working on a matrix that will show us
19 the person and its affiliates, about where they're invested all
20 over the board.

21 A. That's correct.

22 Q. And something new came out today that I wasn't clear on,
23 and maybe I somehow missed it. In addition to the two LLCs,
24 both Commercial Mortgage Funding and Capital Realty Advisors
25 have served as direct lenders in some of these loans.

1 A. That's correct.

2 Q. And do we know why?

3 A. They were -- they had moneys, and I'm -- to the best of my
4 knowledge, in talking to Mr. Milanowski, there were -- they were
5 used to fill out a subscription of a various -- of various
6 loans. We just say Commercial Mortgage may have -- if there was
7 an \$8,000,000 loan and there were at 7.7 million dollars, they
8 would fill -- round out the -- the balance of the subscription
9 for a transaction.

10 Q. And Commercial Mortgage Funding and Commercial Realty
11 Advisors do not have what we've called either direct lenders or
12 fund members invested in them; is that correct?

13 A. That's correct.

14 Q. But in the unfortunate event that either direct lenders or
15 fund members were not paid in full, it is possible that they
16 would have creditor claims against, among other entities, those
17 entities; is that correct?

18 A. Yes. That's correct.

19 Q. So, consequently, keeping separate the direct investment of
20 the other debtor entities will eventually emerge to the benefit
21 of all of the creditors.

22 A. That's correct.

23 Q. There's intercompany debt between these entities; is that
24 correct?

25 A. Yes.

1 Q. And are you making an effort to reconcile that
2 intercompany debt?

3 A. Yeah. We're still -- Mr. Merola, we're still sorting that
4 out, but there -- we're tracing the cash at the moment.

5 Q. You mentioned in one of your testimony, I don't remember if
6 it was your direct or your cross, that you've worked on Com
7 Disco which was a big leasing case.

8 A. Yes.

9 Q. And you've also worked in cases where there were broken
10 financings or investor schemes; is that correct?

11 A. Yes, I have.

12 Q. Is it common in those situations to look to third-party
13 claims to satisfy creditors?

14 A. We looked -- in looking to -- in looking to situations,
15 we're looking at third-party claims, for example, Investment
16 Partners in this case, to potentially satisfy claims as -- as a
17 potential source of cash.

18 Q. Well, so, for example, we might have guarantees from
19 insiders on some of these transactions.

20 A. That's correct. And it's -- then it's a third-party
21 source of cash that I would be looking to monetize.

22 Q. Are you aware as to whether any of the directors and
23 officers has filed a bankruptcy yet?

24 A. No, not to my knowledge.

25 Q. Was there director and officer liability and omission

1 insurance?

2 A. No, there was not.

3 Q. Was there an auditor for the entities that published
4 financial statements?

5 A. Yes.

6 Q. Was there a different auditor for the two LLCs?

7 A. There was an -- there was a different auditor for the LLC,
8 and there was a different auditor for USA Commercial Mortgage.

9 Q. Was there an underwriter for the LLC that issued
10 securities?

11 MS. JARVIS: Your Honor, I would object. I think
12 we're getting --

13 THE CLERK: I'm sorry, Counsel, (indiscernible).

14 THE COURT: Oh, I think we are.

15 UNIDENTIFIED SPEAKER: (Indiscernible).

16 THE COURT: Everybody --

17 MR. MEROLA: Well --

18 THE COURT: -- needs to get out of here --

19 MR. MEROLA: -- what I'm trying to get to --

20 THE COURT: -- at some reasonable hour.

21 MR. MEROLA: What I'm trying to get to, your Honor --
22 and I'm happy to cut it off.

23 BY MR. MEROLA:

24 Q. What I'm trying to get to is there's an interrelationship
25 of creditor relationships in these entities, regardless of which

1 entity you specifically gave your money to.

2 A. That's correct.

3 Q. And there are common causes of action that direct lenders
4 and fund members will have against some of these third-party
5 defendants.

6 MS. JARVIS: Your Honor, object. That asked for a
7 legal conclusion.

8 MR. MEROLA: Withdrawn. I apologize.

9 THE COURT: All right.

10 BY MR. MEROLA:

11 Q. Let's talk a little about the budget, and I want to make
12 sure, like many of the people who direct advisors to the
13 investors are very concerned about this, and I thought the
14 hypothetical that was asked was very clarifying, so I want to
15 make sure I understand it.

16 The direct investors have a note with a specified
17 interest provision to which they are entitled; is that correct?

18 A. Yes.

19 Q. But the borrower pays the debtor an amount of interest in
20 excess of that amount because of fees; is that correct?

21 A. That's correct.

22 Q. Is the differential between the interest in the note and
23 the interest paid by the debtor under any document property of
24 the direct investor?

25 A. No.

1 Q. So that is money that belongs to the debtor for its use; is
2 that correct?

3 A. That's correct.

4 Q. And under the budget you proposed, the only money that the
5 debtor is using is the money generated by those fees.

6 A. That's correct.

7 Q. You are not taking any money out of principal on account of
8 fees that were accrued but unpaid; is that correct?

9 A. That is correct.

10 Q. You're only taking money out of fees paid and when earned;
11 is that correct?

12 A. Yes.

13 Q. And the amount that you collect on account of principal and
14 interest is held in a single segregated account for the benefit
15 of investors.

16 A. That's correct.

17 Q. Now, this is where it gets tough because some of those
18 investors are going to be people that have no problems anywhere
19 with a debt (indiscernible) entitled to that money,
20 theoretically.

21 A. Correct.

22 Q. Some of those investors are going to be entitled to some of
23 their money, but they might have gotten overpaid elsewhere; is
24 that correct?

25 A. That's correct.

1 Q. Some of those poor investors invested their money, and the
2 deed was paid off, so there is no money to come in for them; is
3 that correct?

4 A. Yes.

5 Q. And then, finally, the guys with the black hats ride in.
6 Some of the insiders were direct investors, weren't they?

7 A. Yes.

8 Q. And some of the insiders were substantial direct
9 investors, weren't they?

10 A. Well, they were -- some of the insiders were investors,
11 yes. But in -- and that's -- they also were on Investment
12 Partners where they may have had the equity stake.

13 Q. So they're both -- in some cases they're both --

14 A. An investor and an equity holder.

15 Q. So they're in the LLC, and they're also an investor.

16 A. Yes.

17 Q. So some of those funds that are being put in impound for
18 the benefit of either direct lenders or fund members might be
19 earmarked, at least initially, for the benefit of insiders.

20 MS. JARVIS: Your Honor, I would object to the
21 characterization. I don't think we've agreed to to earmark, you
22 know --

23 THE COURT RECORDER: Could counsel speak into
24 one of the microphones, please.

25 MS. JARVIS: So I think it's mischaracterizing

1 the testimony.

2 THE COURT: (Indiscernible) microphone. You could be
3 seated.

4 MR. JARVIS: I'm sorry. I think it's
5 mischaracterizing his testimony. I think he said this
6 is segregated. We haven't earmarked anything for anyone.

7 MR. MEROLA: I apologize, your Honor. I don't mean to
8 misconstrue the testimony.

9 BY MR. MEROLA:

10 Q. My understanding of the testimony is that the money was
11 segregated, and in the single account there would be an
12 accounting as to which loan each payment came in on account of,
13 and then, after that, you have a schedule that would tell you
14 because it came in this loan it is for the benefit of these
15 direct lenders which may include some of the funds.

16 A. That's correct.

17 Q. Okay. When you prepared your budget, did you make any
18 assumption about administrative costs to this estate other than
19 for the debtor and debtor in possession?

20 A. I think we carved some money out for creditors committee as
21 well.

22 Q. And in making that assumption, how many creditors
23 committees did you assume?

24 A. One.

25 Q. And what is your view of the cost to the estate if there is

1 more than one creditors committee?

2 A. The -- the -- as you can see, the estate is pretty tight in
3 cash flow as it currently exists. For this estate to have
4 multiple committees would overburden the estate and potentially
5 render it insolvent.

6 Q. One minute, please.

7 (Colloquy not on the record.)

8 MR. MEROLA: Thank you, your Honor. No more --

9 THE COURT: Okay.

10 MR. MEROLA: -- questions.

11 THE COURT: Ms. Chubb.

12 MS. CHUBB: Thank you.

13 CROSS-EXAMINATION

14 BY MS. CHUBB:

15 Q. So have you come across in your inspection of the records
16 any moneys that were collected but not loaned out and not
17 returned?

18 A. I'm sorry. I don't understand your question.

19 Q. Have you found moneys, in looking at the records, where
20 people paid moneys in, they weren't loaned out on the loan that
21 they were solicited for, and they weren't returned to the direct
22 lenders?

23 A. There's a couple of instances where that could happen. For
24 example, what one of the -- one of the motions we have up is to
25 return the Bundy Canyon money, and that would be an example

1 where the loan was solicited, the funds were put in trust --

2 Q. Um-h'm.

3 A. -- held in escrow, and not -- and then were not disbursed
4 yet. That was part where the Chapter 11 occurred.

5 Bundy Canyon, the two -- the 70-percent holders of
6 Bundy Canyon were Mr. Milanowski and Mr. Hantges. I decided
7 not to go forward with that loan, and we're seeking to return
8 those moneys to investors. So that's one example.

9 There are also, at the time of the bankruptcy, individual
10 cases where individuals had either -- went to invest into a
11 certain -- into a transaction or were getting -- or where they
12 -- where they may not have been -- they were -- that the
13 collateral release form, he had -- they hadn't been assigned on
14 the note.

15 So there were some investors that were caught in-between
16 where they either may have been investing or they may have opted
17 out of one of those -- asked to be paid out of one of the loans,
18 and they may have been caught in the bankruptcy.

19 Q. And what does caught in the bankruptcy mean? Are they
20 going --

21 A. The -- their --

22 Q. -- to get their money back?

23 A. Their -- they had -- individuals may have had moneys that
24 were -- a check had been cut.

25 Q. Um-h'm.

1 A. And the check was to -- was -- and it was -- was caught in
2 the bankruptcy and returned as a pre-petition claim.

3 Q. So they would just be claimants? How does that money --

4 A. Until the Court -- until the Court gives me some guidance
5 on how to treat those individuals, we've identified that class
6 of creditors.

7 Q. You've identified them --

8 A. We've identified the individuals, and we've identified the
9 money. But until we have authority to disburse --

10 Q. Okay.

11 A. -- that money has been set aside.

12 Q. Okay. Do you know if the debtor is going to ask that that
13 money be disbursed?

14 A. That'll be subject to a future motion.

15 Q. Okay. Are all of the Bundy loans listed in -- are all
16 those moneys being repaid or were there Bundy loans --

17 A. No. There's --

18 Q. -- before?

19 A. There were previous Bundy notes, and those -- those loans
20 are fully funded, and they're secured.

21 Q. Okay. Thank you. Did you testify that there's \$12,000,000
22 in the collection trust fund now?

23 A. No, that was at the time. There was \$12,000,000 at the
24 time of the filing -- at the time of the filing.

25 Q. And how much is there now?

1 A. I don't know at this moment.

2 Q. There's more --

3 A. Yes.

4 Q. -- I assume. Okay. And how much in pre-petition fees
5 does the debtor intend to collect out of that account as part of
6 the budget? I mean, things that were -- you think were owed for
7 fees at the time of the filing?

8 A. We're still -- we're still evaluating that. I can't --

9 Q. You don't have --

10 A. -- give you a number.

11 Q. -- any idea?

12 A. I can't give you a number at this point in time.

13 Q. And that's not set forth in the budget. So you've just
14 taken moneys available and moneys that you need to spend, and
15 it's not -- it hasn't been cross-referenced, so we don't know
16 how much of pre-petition fees would be paid out, right?

17 A. I'm -- I'm not sure where you're going, pre-petition fees.

18 Q. Well, at the time of the filing what if USA Commercial --
19 what if the debtor had not taken fees that it was owed? Are you
20 proposing to take those now?

21 A. The debtor may -- the debtor may not have taken some fees
22 and maybe owed fees by, for example, a late fee by a borrower,
23 and we'll be seeking to enforce fees that -- that we should have
24 enforced from various borrowers who we continue to have a
25 lending relationship.

1 Q. Were there pre-petition servicing fees that were still in
2 the collection account at the time of filing? Do you know?

3 A. Not -- I -- I don't know the answer to that.

4 Q. Okay. So you don't know -- actually, how much will be
5 left of that collection account from -- how much are you going
6 to eat into what was there at the time of the filing by the end
7 of your budget?

8 A. The budget --

9 Q. So if we started with --

10 A. The budget is -- is not to eat into it, but to continue to
11 operate on -- on -- on current fundings.

12 Q. So that'll be just as it was at the time of the filing.
13 You're not going to use any moneys out of there that were there
14 at the time of the filing?

15 A. We're -- we're not going to use moneys that were principal
16 and interest that were collected on behalf of investors.

17 Q. Okay. So you're not taking out any money that would
18 belong to direct lenders to pay fees to the debtor, right?

19 A. We're segregating those moneys out. We're segregating
20 direct investors' principal and interest out, and we're not
21 touching those moneys.

22 Q. Okay. And with respect to the appraisals, will there be a
23 surcharge against direct lenders on performing loans for those
24 appraisals?

25 A. The -- the -- the cost of the loan -- the cost of the

1 appraisals will be -- will be charged throughout the estate.

2 Q. Any idea -- oh, throughout the estate?

3 A. Yeah.

4 Q. So direct lenders don't have any idea what they might have
5 to pay out.

6 A. There's no surcharge.

7 Q. There will be no surcharge.

8 MS. JARVIS: Your Honor, I would object. This motion
9 is not yet on file with the Court, and it will be addressed at
10 that time.

11 THE COURT: All right.

12 MS. CHUBB: All right.

13 BY MS. CHUBB:

14 Q. Can you tell me what liens have been released without
15 paying the direct lenders? You said there was about
16 18,000,000. Are those identifiable?

17 A. At this time I -- I -- we're still working to identify
18 totally amount -- the amount of loans that have been released.

19 Q. Well, do you know which loans we're talking about?

20 A. There are -- yes. There are several loans that are in
21 that category.

22 Q. Can you just tell me which loans they are? There's a
23 great concern about this as you can imagine.

24 THE COURT: Well, but how is that relevant to today's
25 hearing?

1 MS. CHUBB: I'm just trying to find out where the
2 client's --

3 THE COURT: Can't you --

4 MS. CHUBB: -- money is.

5 THE COURT: -- inquire later?

6 MS. CHUBB: Yes.

7 THE WITNESS: I -- I would be happy to answer --

8 BY MS. CHUBB:

9 Q. Okay.

10 A. -- on -- as soon as I can --

11 Q. Okay.

12 A. -- refer. I don't have the records up here to go
13 through --

14 Q. Okay. This is relevant --

15 A. -- it transaction by transaction.

16 Q. -- to today's hearing. How much money can you borrow by
17 monetizing the accounts receivable that are due to the debtor?
18 You talked about borrowing money. How much can you borrow?

19 A. Well, I'm not borrowing off -- what we're -- what we're
20 seeking to -- again, that motion is not filed, but we're in
21 discussion with lenders to provide us a working -- a facility of
22 \$100,000,000.

23 Q. 100,000,000. Okay. And is there some reason why that
24 money can't be used instead of any money that comes in on direct
25 loans for operating the debtor in possession?

1 A. What we're planning to use to operate the debtor in
2 possession is loan administration fees and service fees that the
3 debtor is entitled to under each of the loan contracts.

4 Q. Okay. In the hypothetical that was given to you, that was
5 one percent. Are there other fees that you'll be collecting
6 that the direct lenders wouldn't -- would essentially be using
7 to support the operation of the reorganization?

8 A. Could you -- if you're talking about am I touching direct
9 -- the -- the fees that USA Commercial Mortgage would be using
10 -- will be collecting that it's entitled to as loan servicing
11 agent are the fees we're using to administer the estate.

12 The interest that is due to the direct investors is being
13 held for the benefit of the direct investors.

14 MS. CHUBB: Okay. Thank you very much.

15 THE COURT: Okay. Thank you.

16 CROSS-EXAMINATION

17 BY MR. KINAS:

18 Q. I guess it's a good afternoon. Rob Kinas for some of the
19 direct lenders. I'll be brief, but I have a few questions.

20 You've mentioned on the post-petition principal and
21 interest payments that come in, are you going to put those just
22 in the DIP account or are you intending to establish separate
23 accounts, escrow accounts, for each one of the loans for the
24 principal and interest?

25 A. At this time I'm planning to keep them in the DIP account,

1 but the account -- you have an accounting -- in counting for
2 each of them separately rather than have the estate incur the
3 costs of opening up separate escrow accounts for each one.

4 Q. Some of the loans have interest reserves. If those
5 payments come from the interest reserves, are they going to
6 flow into the DIP account?

7 A. Yes. They'll go through the -- the -- the cash management
8 system.

9 Q. And is it your present intent to charge a servicing fee as
10 to those funds that come in from the reserve account?

11 A. I'm going to charge a -- we'll be -- we'll be collecting
12 moneys in accordance with each loan, the extent that each of the
13 loans has a -- each of the loans as a loan service -- or, loan
14 administration fee that's intrinsic to each of the loans. We'll
15 be collecting that fee that's due to the -- due to Commercial
16 USA, Commercial Mortgage.

17 That is not the amount of interest that is due to each of
18 your clients. There is a difference between the two amounts.

19 Q. Okay. Earlier there was some questions and answers
20 regarding the setoff on the Wells Fargo stipulation. A couple
21 follow-ups on that.

22 The new post-petition accounts that you have established
23 are not subject to that setoff; is that correct?

24 A. That's correct. They're at a separate bank.

25 Q. As --

1 A. Bank of America.

2 Q. As to the pre-petition accounts that are subject to the
3 setoff, are you aware of the source of funds that were in those
4 accounts?

5 A. They're USA Commercial's funds. I haven't checked on --
6 they're -- they're under USA Commercial Mortgage.

7 Q. Would it be correct that the funds that were subject to the
8 setoff were not direct-lender funds?

9 A. They're USA Commercial Mortgage's funds.

10 MR. KINAS: That's all I have. Thank you.

11 THE COURT: Okay. Ms. Davis?

12 CROSS-EXAMINATION

13 BY MS. DAVIS:

14 Q. Good afternoon. I'm Laurel Davis. I represent some of the
15 direct lenders. I apologize. I have the same cold problem that
16 the Judge does. I will be very brief in my questions. I just
17 have a few follow-up questions.

18 With respect to the insider loan transactions that were
19 briefly hit upon in earlier counsel's examination, you
20 mentioned that you had just negotiated on -- or are in the
21 process of negotiating a \$57,000,000 workout of an account
22 receivable.

23 You mentioned that you are working on a security agreement
24 and some collateral for that loan -- or, for that workout
25 arrangement. Could you identify the collateral. Is it personal

1 property, real estate, or a combination?

2 A. It's a -- it's real estate. It's real property. We're
3 going to be -- we're appraising that real property at the --
4 we've retained -- the appraisal firm that we've retained, I've
5 asked to -- its first priority is to get a value of the real
6 estate that is being pledged as collateral.

7 It's a variety of different types of real estate, real
8 property, and it goes from raw land that's subject to
9 development to potentially a hotel that is owned by Investment
10 Partners.

11 Q. And with respect to the follow-up questions on the
12 investors' interests in direct loans and their equity
13 partnership interest in the LLC, is there any overlap between
14 the collateral for this workout and their other interests in the
15 loan portfolio?

16 A. No. This is -- this is a -- these are -- what we're
17 securing the Commercial Mortgage receivable with is -- is -- is
18 assignable interests in -- in real property that we can take a
19 first lien position on.

20 Q. Great. And then focusing specifically on the insiders,
21 Mr. Hantges and Mr. Milanowski and anyone else you would
22 consider to be an insider, of the 114 loan portfolio, can you
23 identify the number of loans in which they are either a direct
24 investor or otherwise participating in the loans?

25 A. There are -- the way I would characterize it, and the way I

1 look at it, is that there are 49 loans in the portfolio that
2 Investment Partners has an equity interest in.

3 Q. And so you would characterize the insider loans as only
4 those loans in which that entity holds an interest?

5 A. Yes.

6 Q. So Mr. Hantges doesn't have a direct lender investment in
7 any of his loans?

8 A. He may, but I haven't looked at if he's a direct-line
9 participant in any of the loans. I -- I don't know that fact.
10 I haven't -- I haven't had many direct discussions with
11 Mr. Hantges.

12 Q. And with respect to Mr. Milanowski, would you say the same
13 is true?

14 A. Yes.

15 Q. Okay. So your focus on insider transactions thus far has
16 been with respect to the other entities and the LLC; is that --

17 A. Yes.

18 Q. And you've mentioned that you have ongoing work. Is one of
19 the components of your ongoing work going to include a further
20 examination of the insider connections?

21 A. Yes.

22 Q. Okay. Just a couple more follow-up questions. I was a
23 little confused about how you're handling the post-petition
24 payments on the direct loans.

25 Are you collecting those and putting them in the DIP

1 account or are they going into the trust account?

2 A. Well, they go into the trust account first and then into
3 the DIP account, but we're holding those moneys in -- we're
4 holding the moneys that we collect until we have authorization
5 from the Court to disburse.

6 Q. So from the perspective of segregating the funds on a
7 loan-by-loan basis, are you doing that internally by books and
8 records?

9 A. Yes. Through internal accounting systems we can identify
10 what principal and interest we're collecting.

11 Q. Okay. And will there at some point in time be a schedule
12 on a loan-by-loan basis with respect to all this relevant
13 information?

14 A. Yes, ma'am.

15 Q. One final question. You identified one loan as recently
16 having been paid off. Do you recall the name of that loan?

17 A. Opaque.

18 Q. I'm sorry?

19 A. The loan was called Opaque.

20 Q. Opaque? O-p-a --

21 A. Yeah. Like opaque.

22 Q. Okay. And then, finally, you identified two loans that you
23 have discovered appear to be unsecured?

24 A. Yes.

25 Q. Do you recall the names of those two loans?

1 A. I don't have the list in front of me.

2 MR. JARVIS: Your Honor, I would --

3 MS. DAVIS: Could counsel provide that information to
4 me?

5 MS. JARVIS: I would object to the relevance of
6 this --

7 THE COURT: So why don't we just -- you could provide
8 that later.

9 MS. DAVIS: Yeah.

10 MS. JARVIS: Okay.

11 MS. DAVIS: I'm just following up on some other
12 questions.

13 THE COURT: All right.

14 MS. DAVIS: Thank you very much.

15 THE COURT: Oh, no. Thank you. Anyone else?
16 Okay. Mr. Farrow.

17 MR. FARROW: Thank you, your Honor. Some just quick
18 follow-ups with respect to the testimony. Scott Farrow with the
19 U.S. Department of Justice. I represent the United States
20 Trustee and a few questions for Mr. Allison.

21 CROSS-EXAMINATION

22 BY MR. FARROW:

23 Q. In your chart -- the list, performing/nonperforming loans,
24 is there a date element to it? So, in other words, do you
25 characterize any loan that hasn't received interest within so

1 many days as nonperforming and, if so, what's the time frame?

2 A. Well, first of all, I'm looking at the nonperforming loans
3 as where they're delinquent, where they -- a month or more than
4 a month in -- in delinquency. Performing loans are those that
5 are paying current interest.

6 Q. So if it's more than 30 days due, it would be considered
7 nonperforming.

8 A. Correct.

9 Q. Okay. Looking at your budget, you project new loan
10 origination fees starting on July -- the week of July 16th of
11 approximately \$900,000; is that correct?

12 A. Yes.

13 Q. If you don't do new loans and get origination fees, this
14 budget results in negative numbers, does it not?

15 A. Yes, it does. That's correct.

16 Q. About the tune of just under \$800,000 (indiscernible).

17 A. Correct.

18 Q. You're projecting over the 13 weeks professional fees of
19 2.181 million dollars; is that right?

20 A. Yes.

21 Q. Does that include your fee or are you listed under the
22 salaries?

23 A. No. I'm -- that includes my fee as well.

24 Q. Okay. You earlier testified that you thought there were
25 approximately 3600 direct lenders; is that right?

1 A. Yes.

2 Q. Do you have a number for how many fund members you believe
3 there?

4 A. Approximately 3200.

5 Q. Now, do you have confidence with respect to the fees you're
6 going to collect to operate, that they are, in fact, due and
7 owing, and let me give you the hypothetical before I ask you to
8 answer that question.

9 You've earlier testified that interest was paid where no
10 interest was collected; is that correct?

11 A. Yes.

12 Q. Were fees paid on interest that was not collected although
13 it was paid out?

14 A. Well, essentially, what the debtor did prior to my coming
15 on board is take all of the -- take whatever moneys they
16 collected and paid it to all of the investors. It -- it did
17 that until it ran out of cash.

18 Q. Okay.

19 A. So, essentially, what I -- what I'm -- what -- what we've
20 built up is a budget that looks perspectively at properly
21 accounting for and properly taking the fees that are entitled --
22 that we're entitled to and were negotiated as part of our
23 contractual right when the transactions were originated.

24 Q. Well, where my question goes is if, for example, in the
25 hypothetical you talked about taking one-twelfth of one percent

1 on a going-forward basis as the fee.

2 My question is is do you have confidence that the
3 debtor didn't already take the annual fee in prior
4 disbursements?

5 A. No. Those fees were collected on a monthly basis. As
6 interest was collected -- the loans were structured where the
7 fees would be taken on a monthly basis.

8 Q. So you do have confidence that the debtor hasn't already
9 prepaid itself for annual fees.

10 A. That's correct.

11 MR. FARROW: Okay. Thank you. No more questions.

12 THE COURT: Okay. Thank you. All right. Let me
13 just -- so we save time, is there any opposition -- oh.
14 You're excused. Excuse me.

15 THE WITNESS: Thank you, your Honor.

16 THE COURT: I'm so sorry.

17 MS. JARVIS: Your Honor, if I could just
18 (indiscernible) --

19 THE COURT: Oh. Did you want to redirect?

20 MS. JARVIS: -- clarify just a couple --

21 THE COURT: Okay.

22 MS. JARVIS: -- of things. Okay?

23 REDIRECT EXAMINATION

24 BY MS. JARVIS:

25 Q. Mr. Allison, you were asked about past-due servicing or

1 servicing fees that would have been due to Commercial Mortgage
2 prior to the filing of bankruptcy that may not have been
3 collected. Many of those past-due fees are included in the
4 budget; is that correct?

5 A. That's correct.

6 Q. And let me just clarify -- let me mark -- this was
7 actually attached to your -- because we have a lot of questions
8 about it.

9 This was attached to your declaration that we filed that we
10 have marked the loan servicing agreement that you attached just
11 so we can make sure everybody understands what we're talking
12 about with this -- with respect to this servicing fee.

13 THE CLERK: And this is No. 7. Is this one copy or is
14 this several copies.

15 MS. JARVIS: This is one copy.

16 BY MS. JARVIS:

17 Q. Okay. This is -- I'm going to show you what we are having
18 marked as Exhibit 7. Do you recognize this agreement?

19 A. Yes, I do.

20 Q. Okay. And is it your understanding that this agreement was
21 signed by each of the investors that invested with Commercial
22 Mortgage either directly or through the funds?

23 A. Yes.

24 Q. Okay. Let me show you what is --

25 THE COURT: Well, let me clarify. If an investor

1 invested money -- if a member invested money with the fund, he
2 wouldn't have a loan-servicing agreement with Commercial
3 Mortgage. The fund would, but not the individual, correct?

4 THE WITNESS: The individuals would have signed this
5 as well, your Honor.

6 THE COURT: Even though they were just a member of the
7 fund?

8 THE WITNESS: Yes, your Honor.

9 BY MS. JARVIS:

10 Q. Let me show you what is on Page 4, and if you could look at
11 Paragraph 5. Do you see that?

12 A. Yeah.

13 Q. Is this what you were talking about with respect to the
14 loan-servicing fee?

15 A. Yes, Ms. Jarvis.

16 Q. And in this case, it indicates it's three percent; is that
17 correct?

18 A. That's correct.

19 Q. And in some cases it's one percent?

20 A. Yes.

21 Q. But it's always at least one percent.

22 A. It's always -- it's at least one percent, and we built a
23 budget up on one percent where we have the right to charge three
24 percent.

25 Q. And so this is the fee that we're talking about when we

1 talk about the servicing fee; is that correct?

2 A. Yes.

3 Q. Yeah. Let me also -- you indicated that you are
4 collecting these fees as it comes in for the performing loans.
5 With respect to the nonperforming loans, is Commercial Mortgage
6 then accruing the amounts that would be owed under the servicing
7 fee?

8 A. Yes, we are.

9 Q. So if those amounts then are collected, if your collection
10 efforts are successful, then those amounts would be available to
11 be collected at the time those nonperforming loans become
12 performing loans.

13 A. That's correct.

14 Q. Let me ask you just as a final question you've been asked a
15 lot of questions today about, you know, that you infer certain
16 parties having claims to other -- to certain funds.

17 You are not, in any way, testifying that any specific
18 party, direct loans, funds, have any specific claims to the
19 funds because you're not from a legal point of view, are you?

20 A. No. I'm -- I don't have a legal -- I'm not a lawyer.

21 Q. And you were simply trying to explain how things, you
22 know, worked from a business point of view.

23 A. That's correct.

24 MS. JARVIS: Okay. Thank you. That's all I have,
25 your Honor.

1 THE COURT: Okay. Thank you. You may step down.

2 THE WITNESS: Thank you, your Honor.

3 (Thereupon, the portion requested to be transcribed
4 concluded at 01:25:03 p.m.)

5 (Thereupon, portion requested be transcribed
6 commenced at 02:44:19 p.m.)

7 THE CLERK: Bankruptcy court is now in session.

8 THE COURT: Be seated. Okay. You'll be happy to
9 know the projector's now working, so --

10 UNIDENTIFIED SPEAKER: Yeah.

11 MR. SCHWARTZER: I want to know -- there's still
12 something it won't do, your Honor. We can't get it to rotate
13 the right way, so if you had a document -- or just
14 (indiscernible) --

15 MS. CHUBB: Actually, she should use --
16 use this one. Use this one (indiscernible) --

17 MR. SCHWARTZER: Turn that one?

18 MS. CHUBB: It will show what the problem is.

19 MR. SCHWARTZER: Now I did something.

20 MS. CHUBB: You broke it.

21 MR. SCHWARTZER: I broke it. That's how quickly
22 (indiscernible).

23 MS. CHUBB: Okay. Use this one because this is the
24 problem when they have them like this.

25 (Colloquy not on the record.)

1 MR. SCHWARTZER: If you have a document that's
2 lengthwise, you can't rotate it so it's lengthwise on the
3 display.

4 THE COURT: I heard that's a problem. I don't know --
5 and, you know --

6 MR. SCHWARTZER: So --

7 THE COURT: -- and the systems they were supposed
8 to --

9 MR. SCHWARTZER: And we have -- in our first exhibit,
10 if you recall, Exhibit No. 1, was that type of document, so they
11 still have work to do, your Honor.

12 THE COURT: I know. Apparently, when they upped the
13 systems, we were told it was going to work great, and, hey, it's
14 the government. What can I say?

15 MR. SCHWARTZER: Well, it worked a little bit.

16 THE COURT: Okay. On the administrative
17 consolidation --

18 MS. CHUBB: Joint administration?

19 THE COURT: Sorry. Joint administration. I'm so
20 sorry.

21 MS. CHUBB: How badly do you want to consolidate?

22 THE COURT: No.

23 MS. CHUBB: No.

24 THE COURT: That would cause a big fight.

25 MS. CHUBB: Yeah, it would.

1 THE COURT: What's the --

2 MR. SCHWARTZER: Your Honor.

3 THE COURT: -- kind of pros and cons both ways --

4 MR. SCHWARTZER: Okay.

5 THE COURT: -- on this one?

6 MR. SCHWARTZER: I think joint administration, the
7 best thing about it is that it limits the number of papers that
8 have to be filed. And that if you have joint administration,
9 we'll just order one case to be the lead case, and everything
10 will be filed under one docket.

11 But I understand, from the Court's experience with that
12 issue, that it becomes difficult when you have issues that only
13 affect the side issues.

14 And what we would suggest as part of the joint
15 administrative order and case management order that we do the
16 same -- a provision that we've used before which is we have four
17 or five entities on the docket and then we have six boxes.

18 One box will be affects all debtors, and then we have
19 boxes for each of the debtors. So if it only affects one of the
20 debtors, the attorney filing it should check off only the debtor
21 it's filed in.

22 THE COURT: But how does that get translated to the
23 docket sheet?

24 MR. SCHWARTZER: Okay. What I would then suggest is
25 as part of the case administration order is it always is going

1 to be filed in the lead case. But if you check off that it
2 affects one of the -- one but not all of the other debtors, it
3 also will be filed in that docket.

4 So if you're saying I have something that only affects USA
5 Capital Securities, I would file it in the lead case, and I
6 would file it in the USA Securities case. That way someone who
7 is only interested in USA Securities might only look there.

8 What we want to do is avoid -- and this is actually -- a
9 part of it is the expense problem on our side as counsel. Even
10 though it's just a press of a button, we know, from my
11 experience from the other night, filing the motion with regard
12 to the attorney -- the pay -- the \$10,000 in pay, my staff
13 people have to spend about five minutes downloading it in each
14 case.

15 So when you do five cases, what's a five-minute job
16 becomes a half-an-hour job. Somebody has to pay for that
17 paralegal to sit there to do that.

18 It's an expense, and it doesn't benefit anybody because it
19 would be in the lead case. And in this case, USA Commercial
20 Mortgage is the only borrower who's been paying payroll.
21 We think that would be the best solution as far as that going.

22 In addition --

23 THE COURT: Is there also a space -- and I should
24 know this -- but since I don't upload documents, isn't there
25 also ability for you to put in the docket entry which debtor it

1 affects as well? I mean, you could add text to the pull down,
2 can you not?

3 MR. SCHWARTZER: Yes, you can. You can. In the
4 title of the document you can say which party it's on behalf of.

5 I'm trying to think. The problem with that is -- and this
6 is -- maybe someone else -- you know, I really should have my
7 paralegal here, Angela (phonetic), because 95 percent of what's
8 downloaded is done by a paralegal, not by an attorney.

9 I think you could pick the name of the debtors, but
10 there's no way of picking all debtors. Now, maybe I could
11 speak to Marianne about whether we could have something that
12 allows you to say on behalf of all debtors you file this.

13 Clearly, in the title of the motion we could write
14 debtors in the plural --

15 THE COURT: Right.

16 MR. SCHWARTZER: -- motion and in that way be
17 helpful.

18 I think you're always going to have the problem that, one,
19 you're going to have fairly sophisticated counsel who have
20 bothered to read the joint administration order and case
21 management order and do it correctly, and there will be less
22 sophisticated counsel and pro pers who don't read that order and
23 will not do it correctly, and I don't have a solution for that
24 latter problem, your Honor.

25 THE COURT: Well, why don't we do -- and let's kind of

1 get to the nitty gritty. If we jointly administer, what do we
2 do about -- well, let me ask.

3 What's the U.S. Trustee's intent vis-a-vis committees or
4 committee?

5 (Colloquy not on the record.)

6 MR. FARROW: Your Honor, if my ears looked chewed on,
7 it's because they have been. I've heard from probably everybody
8 in the room at least once.

9 At this point the intent of the United States Trustee is to
10 appoint at least one, and probably three, committees, as much as
11 people are going to groan about that, due to the potential
12 conflicts and the differences of opinion. Those would be the
13 committees in the three main -- or, a committee in each of the
14 three main cases.

15 We'll have final determination of that by May 8, and we'll
16 have our committee appointments down by the 10th. The reason is
17 was because we gave people time to respond, and we have received
18 numerous responses.

19 We did solicit everybody on the 20 largest, and we've
20 gotten a plethora of telephone calls since then, and anybody
21 who's asked, we've sent a solicitation package out to. So we
22 will have at least one, probably three committees.

23 THE COURT: So if we have joint administration, how
24 does that affect -- how we do the commercials on the -- as
25 opposed to putting it in each individual case? I mean, if there

1 are committee for separate -- you mean a committee for separate
2 debtor or separate --

3 MR. FARROW: No, there would be --

4 THE COURT: -- interests in the broader sense?

5 MR. FARROW: No. The committees are for separate
6 debtors.

7 THE COURT: For separate debtors.

8 MR. FARROW: So I don't think it matters whether you
9 jointly administer the case because I don't think the duties of
10 -- for example, that if you have joint administration, it
11 doesn't mean the professionals get to just prepare one fee
12 application that says here's all my time, and I'm only putting a
13 file into one case, and I'm not going to tell you what time I
14 spent on each individual cases.

15 I think they are required to still provide an allocation
16 and demonstrate benefit for the services rendered to each of the
17 debtors if they are representing multiple debtors because it's
18 not substantive consolidation, and I think the same would be
19 true with respect to the committee and their professionals as
20 well.

21 THE COURT: Because the biggest problem I see is I'm
22 going to have hundreds and hundreds and hundreds, probably, of
23 motions to attempt to cut off the servicing agreement, and
24 that's only going to affect Commercial Mortgage.

25 MR. FARROW: One of the possibilities is that -- and I

1 discussed this with debtors' counsel -- is that they are willing
2 to, and will because they're going to have to, look at the
3 docket as motions are filed.

4 If they believe it is in the wrong case or it affects a
5 different case than what is said or they filed it in every case
6 and it only affects one case, that they'd be willing to prepare
7 and send out a notice to that party saying you filed in this
8 case, we believe it only applies to this case, and if you don't
9 respond in 30 days, that's how it's going to be treated, and use
10 that as an opportunity with this case management order that
11 we're talking about today to say that's what happens, so that at
12 the end of the day we can get the dockets correct so we get the
13 right motions in the right dockets.

14 THE COURT: Well, as it works under joint
15 administration now, the orders always provide that there's just
16 one docket sheet kept.

17 And I appreciate Mr. Schwartz's suggestion to, in
18 essence, keep, okay, if it really is only one debtor, keep a
19 separate docket sheet, but doesn't that kind of belie the
20 whole --

21 MR. FARROW: Your -- it's going to be -- people are
22 going to get it wrong no matter what you do. I do like the
23 joint administration idea. It seems to me with the boxes, I
24 like that idea.

25 And with respect to the check boxes, if the debtor believes

1 that it's checked inappropriately, you know, because I suspect
2 we'll see a lot of -- it's all the cases, even though it has no
3 relevance to the other four cases, the debtor could then use
4 this methodology to say no, it only relates to one case, and
5 we're going to treat it as it relates to one case for purposes
6 of addressing those motions.

7 THE COURT: Okay. Any other comments on joint
8 administration as opposed to -- and let me tell you what my
9 idea is.

10 If we didn't do joint administration, we could certainly
11 make life easy by just saying one no -- if the pleading lists
12 all five cases, you just send out one notice that says this
13 relates to all five cases, we're sending you one copy. You only
14 need to send one copy, so we could ameliorate those concerns.

15 MS. CARLYON: Your Honor, I echo Mr. Schwartz's
16 comments that it makes sense to have joint administration. I
17 echo his comments that there's an increased expense of
18 attempting both to file things in each case and to search for
19 things and print them up in each case.

20 We've already had the problem of debtors counsel using a
21 joint caption but then filing it in all five cases because,
22 then, as you print out the documents, you can't tell which file
23 it belongs in, and we're going to have the same problem that we
24 had in ABT of people filing things that look the same and aren't
25 quite the same.

1 So having everything filed in one place makes a lot of
2 sense to me. Having a requirement that you put in the title of
3 the document, paren, affects all debtors, or, paren, affects the
4 following debtors, and list them would make a ton of sense
5 because then from the electronic docket, if you wanted to, you
6 could sort --

7 THE COURT: Do a search?

8 MS. CARLYON: -- those items. In the long run, if
9 there's any way that the clerk's office could set up a program
10 to track that and print it separately, that would be great. I
11 don't know if they can or not. Perhaps BMC could, and that
12 would be great.

13 But in the short run, to me, it makes so much sense to
14 have one docket, but just put in and just type it in,
15 parenthetically, which case or cases it applies to.

16 THE COURT: You know, I neglected to have Marianne
17 here and I meant to. Does anybody know if that's physically --
18 can you physically do -- one can physically do that, right?

19 THE CLERK: Yes. Yes.

20 THE COURT: You can add that in? Okay.

21 MS. CARLYON: Yes.

22 MR. FARROW: Yeah. You can add text --

23 MS. CARLYON: Yes.

24 MR. FARROW: -- to any motion.

25 THE CLERK: Yes.

1 MS. CARLYON: Right. There's a blank that
2 you can add a narrative description at the end of the drop-down
3 menu --

4 THE COURT: Okay.

5 MS. CARLYON: -- for anything. I, unfortunately,
6 have had the personal pleasure of doing that on more than one
7 occasion.

8 THE COURT: I know everybody's been doing their own
9 training and has their own password, but --

10 MR. GORDON: Your Honor, we would agree with that.
11 We're dealing in our office with our staff now having to
12 download five times, but slash up her files and yelling at us
13 about it.

14 And in what Mr. Lepome did, and I -- it was he listed on
15 his caption each of the individuals and below that affects all
16 debtors or filled in the circle. If we're all being served with
17 it, and we note it relates to one debtor versus another, then we
18 can deal with that. Obviously -- and et cetera.

19 I would point out, though, that there are inherent
20 conflicts between these debtors, and as the rule provides and it
21 says for joint administration, it says an order directing joint
22 administration -- I'm sorry.

23 It says prior to entering an order, the Court shall give
24 consideration to protecting creditors at different estates
25 against potential conflicts of interest.

1 And I think as long as we do it in this manner, and we
2 understand that there may be conflicts, and that may arise with
3 regard to retention agreements later on or who's retained as
4 U.S. Trustee, Mr. Farrow said we may have to give time based on
5 -- or (indiscernible) time based on who you do for which debtor,
6 and, ultimately, that will come out as we go.

7 But right now, from a paper standpoint, if we can have one
8 joint case with the understanding that if it affects a specific
9 debtor, that we're given that direction so we can deal with
10 that, or if we want to file something which affects a specific
11 debtor or two debtors, let's do it.

12 THE COURT: Okay.

13 MR. GORDON: I'm agreeable with that.

14 THE COURT: Okay. Any other comments? All right.
15 I'll go ahead and order joint administration. As part of that
16 order, then we'll also have a special procedures order.

17 So the caption must be -- and Mr. Schwartzer had suggested
18 this procedure. I think he knows at the first hearing where he
19 did all the caption and affects.

20 MR. SCHWARTZER: Right.

21 THE COURT: I'm the one that says I don't want you to
22 do it just yet because I'm a little concerned about joint
23 administration. I think that's fine, but I think also in the
24 drop-down menu everybody must put whether it affects all debtors
25 or a particular debtor.

1 I don't think it's wise to also docket it in the case it
2 also affects because then we may or may not have a complete
3 docket in another case, and I think that it sounds --

4 MR. SCHWARTZER: More confusing.

5 THE COURT: -- like a good idea, but I'm afraid it
6 might lead to confusion in the long run.

7 I don't know if we have the ability to search on
8 particular debtors, but, you know -- and everybody's going to be
9 very careful about linking documents. Linking is going to be
10 very, very important in this case when you link oppositions, et
11 cetera.

12 We, you know -- we do -- our clerk staff does a QC, but
13 it's going to be impossible for them to really QC this kind of
14 thing.

15 To the extent that, without too much cost, BMC could work
16 with the clerk's office on this so we have a clean docket, that
17 would be a great idea. I'm not going to order that, I'm just
18 going to suggest that.

19 All right. So I'll allow joint administration. Now, let's
20 shift ahead a little bit to our special procedures order.

21 MR. FARROW: Your Honor, before we --

22 THE COURT: Yeah. I'm sorry.

23 MR. FARROW: -- finish that, just to be clear, you're
24 ordering the joint administration, but you're not today
25 addressing the potential conflict issues.

1 THE COURT: No. I am --

2 MR. FARROW: Those are reserved.

3 THE COURT: That's exactly right.

4 MR. FARROW: Okay.

5 THE COURT: Exactly right. I fully understand there
6 may be potential conflicts at which time they'll have to be
7 addressed and either appropriate actions taken.

8 Okay. On procedures and no particular order. All
9 right. First let's talk about -- we just talked about how
10 matters are captioned. We've dealt with that. They're going to
11 be captioned at the click of the -- and they'll be a USA
12 Commercial Mortgage. Will that be the lead case? Everybody
13 agrees?

14 I don't know if that's the lowest number. Was that the
15 lowest number?

16 MR. SCHWARTZER: No.

17 THE CLERK: It is.

18 THE COURT: It is. Okay.

19 MS. CARLYON: It's the first one filed.

20 MR. SCHWARTZER: No.

21 UNIDENTIFIED SPEAKER: (Indiscernible).

22 THE COURT: So it's not on the lowest number, but I
23 think it's the most appropriate to put it in. And all
24 pleadings after this shall be filed in this case.

25 What do we do about pleadings that were filed before this

1 date? Well, it'll be filed in all the cases, so we could still
2 rely on US Commercial, can't we, because it would have been
3 filed in all cases.

4 If there's anything that applies to just one debtor, I
5 need -- could you -- someone to ferret it out and see whether or
6 not there is something that applies to just that one debtor? I
7 guess it will just be on calendar as it is, correct? It applies
8 to one debtor?

9 MR. SCHWARTZER: Your Honor, what we'll have is an
10 order -- the joint administration will say from the date the
11 order's entered --

12 THE COURT: Right.

13 MR. SCHWARTZER: -- all things have to be filed in USA
14 Commercial --

15 THE COURT: Right.

16 MR. SCHWARTZER: -- Mortgage case, so it'll just be
17 from the date the order is entered.

18 THE COURT: Right. And then all captions must include
19 which debtors are affected, either all debtors or a particular
20 debtor or debtors.

21 Okay. Now, let's go skip -- anything else on captioning,
22 filing? I don't think so. All right. Let's go --

23 MS. CARLYON: So, your Honor --

24 THE COURT: Um-h'm.

25 MS. CARLYON: -- instead of saying the captions must

1 include the narrative description of the filing --

2 THE COUR RECORDER: I'm sorry, Counsel. Could
3 you come to one of the microphones. Thank you.

4 MS. CARLYON: I'm sorry. Just to make it clear,
5 instead of saying the captions must include, we want to say the
6 narrative description of the filing because captions don't make
7 it --

8 THE COURT: Right.

9 MS. CARLYON: -- on the ECF.

10 THE COURT: Exactly. So captions -- it must also be
11 on the caption checked so if people can look at it and see it
12 when they see it, and then as well the narrative description.

13 Okay. Next thing, the calendaring. Let's talk about
14 dates first, and then we'll talk about how things proceed.
15 We now have set May 18. The next is June 2nd. The next date
16 after that was --

17 THE CLERK: June the 21st.

18 THE COURT: -- June the 21st. Okay. I'm not going to
19 be available from June 25th to July 24th. I planned a vacation
20 long -- in the days I thought I'd have another judge and before
21 USA Capital.

22 So maybe -- and, of course, another judge could hear it,
23 but I would think you'd rather not have somebody else hear
24 things in this case.

25 MR. SCHWARTZER: Well, where are you going on

1 vacation, your Honor? Maybe we can have the hearing there.

2 THE COURT: I'm going to Africa.

3 MR. SCHWARTZER: Works for me.

4 UNIDENTIFIED SPEAKER: We'll be there.

5 THE COURT: So I'm going to follow the trail of
6 Dr. Livingston and Mr. Stanley.

7 Okay. So with that in mind, maybe we should move the 21st
8 hearing to the 22nd. That gives us one more day in there? Have
9 you already set things?

10 MR. SCHWARTZER: Your Honor, I'll be in --

11 THE COURT: Oh, you're --

12 MR. SCHWARTZER: -- at a wedding on the 22nd.

13 THE COURT: Okay. All right. We'll leave it the
14 21st then. And then we have one set --

15 THE CLERK: And, Judge, at the top of the motion
16 calendar (indiscernible) --

17 THE COURT: That should not have been done that way.

18 THE CLERK: Pardon me?

19 THE COURT: That shouldn't be done that way.

20 THE CLERK: No. That's our motion day.

21 THE COURT: Well, maybe we can get Judge Markell to
22 hear it or --

23 THE CLERK: How much time? Do we need the whole --

24 THE COURT: Oh, we'll need the whole morning.

25 THE CLERK: Because I have something --

1 THE COURT: I would even say --

2 THE CLERK: I also have you doing Chapter 7s at
3 11:00.

4 THE COURT: Well, we haven't set the motion calendar
5 yet, have we? Why can't we just move it?

6 THE CLERK: No. I'm just saying that that's what's
7 there.

8 THE COURT: So move the motion calendar. Move the --

9 THE CLERK: So move it to the 22nd?

10 THE COURT: Yeah.

11 THE CLERK: Will you be here on the 22nd?

12 THE COURT: Yeah.

13 THE CLERK: Okay.

14 THE COURT: Move the Chapter 11 calendar.

15 MS. CHUBB: So it's at 2:30. That's what you set
16 before, your Honor?

17 THE COURT: It was at 2:30? I think we should leave
18 the whole day for it.

19 THE CLERK: No. Everything was at 9:30.

20 (Colloquy not on the record.)

21 THE COURT: I think it was 2:30, but that's all right.

22 THE CLERK: It was 2:30.

23 THE COURT: Let's make it the whole day. Move
24 everything else to the Thursday.

25 THE CLERK: The only thing is we have scheduling

1 conferences at (indiscernible).

2 THE COURT: They won't take long.

3 THE CLERK: Okay.

4 THE COURT: Or we'll get somebody else to hear them.

5 And then we have July 27th. We could move that to the 25th
6 because I'll be back in time, and I could prepare for that that
7 weekend.

8 So do you want to move the 27th to the 25th? Does that
9 work for everybody?

10 MS. JARVIS: Yeah. Your Honor, that actually would
11 work better for us because Mr. Allison is not available on the
12 27th, so --

13 THE COURT: Okay. And so we'll move it to the 25th.

14 THE CLERK: And do you want all day, Judge?

15 THE COURT: All day. Well, you could set some things
16 in the afternoon.

17 THE CLERK: Okay.

18 MS. CHUBB: 9:30 again?

19 THE COURT: Yes. Is it better -- let me ask this. Is
20 it better, since we have out-of-state people, if we make it
21 later? No. We'll never get done. 9:30 is better.

22 All right. Now, next is the way I see these days are that
23 these are the omnibus hearing days. If someone files a motion,
24 they can use one of these omnibus days. If the motion is filed
25 such that there's 25-days' notice given, they can just pick the

1 date.

2 If it's less than 25 days, you must seek an order
3 shortening time. I will not grant you an order shortening time
4 unless in ten-days' notice, absent dire emergencies, somebody's
5 dying, and I don't mean somebody just needs some money. So you
6 can do it, but I'm rarely going to grant motions on order
7 shortening times in less than ten days.

8 Now, you know, right now we're in the beginning of the
9 case. You may have a -- well, no, you're still within your ten
10 days, so you're okay on the 18th.

11 MS. JARVIS: So it's okay for the funeral but not for
12 the mortgage?

13 THE COURT: That's right. The point is when you set
14 these things on shortened time, nobody has time to really look
15 at it.

16 Everybody comes rushing in here -- like all the mounds of
17 pleadings that was spent today and after everybody had a chance
18 to really listen to what's happening, it was obvious that a lot
19 of the -- you know, you had time to talk to people and
20 understand, and a lot of the wind went out of the sails, and I
21 think people understood.

22 Things on shortened time don't save time. I've discovered
23 that 18 years now. Every time I have something on shortened
24 time, it always has to get continued because people aren't
25 prepared. I'm not -- maybe I'm not prepared.

1 People, you need time to prepare adequately. So I'm
2 rarely going to grant orders shortening time. Orders
3 shortening time should be limited, in any case, in no event
4 less than ten days. Most things in this case should be on
5 30-days' notice.

6 MR. FARROW: Your Honor, with respect to the order
7 shortening time, the request to do so is supposed to state
8 cause, and I have seen the cause be because there's an omnibus
9 hearing date coming up. I'm not -- I don't suspect that's
10 cause.

11 THE COURT: Thank you very much. That's not going to
12 be cause.

13 UNIDENTIFIED SPEAKER: (Indiscernible).

14 THE COURT: You're going to have to tell me why it has
15 to be this date as opposed to the next date since we've set them
16 30 days apart now.

17 All right. Oppositions will need to be filed either ten
18 days after the motion is served, if it's on 20 days, or three
19 days before the hearing, three business days before the hearing,
20 if it's on shortened time. Anybody have a -- do those times
21 make sense for people?

22 Replies should be done by noon the day before. Everybody
23 must give a courtesy copy to the Court. I appreciate the fact
24 we're on ECF, but as you can see, what we have to -- if it takes
25 you five minutes to download, we don't have the staff to

1 download.

2 You can certainly -- when you file the motion, you could
3 mail it to us. Just mail it attention Court Services. If it's
4 on shortened time, obviously, get it sooner.

5 This is specially important to these lengthy motions with
6 exhibits, so everybody must supply a courtesy copy. I may be
7 inclined if I don't get courtesy copies not to hear the motion.

8 If a motion is filed, there'll be no countermotions without
9 either seeking an order shortening time so it's heard that time,
10 or, more importantly, just saying it's separately.

11 So there's no countermotions. I think that just
12 confuses the docket too much. It doesn't give people enough
13 time to respond.

14 In general, most of these cases really aren't
15 countermotions. I mean, there's something that's a
16 countermotion to everything, but they're really a separate
17 grounds for (indiscernible), so there'll be no countermotions.

18 If you've want to file your own motion, file it, and get a
19 date for the hearing. And the mere fact that the motion this
20 was related to is filed that date may not be sufficient, unless
21 you can show it's an absolute nexus.

22 The only absolute nexus I could see is a motion to say -- a
23 motion not to pay Mr. Gustafson (phonetic) today where the
24 countermotion would be, you know, motion to pay Mr. Gustafson,
25 but you still would have to file it separately.

1 Okay. What else do we need to discuss procedural so that
2 we have this as smooth as possible? Anybody?

3 Oh, look who just walked in the door, Ms. Marianne. Wait.
4 (Colloquy not on the record.)

5 MS. CARLYON: The noon the day before, is that going
6 to be only if there's an OST because our -- we, I mean --

7 THE COURT: Yes. Only if there's an OST.

8 MS. CARLYON: -- you have a local rule. Yeah
9 Otherwise, it's just the regular rule.

10 THE COURT: The regular rule. Correct. Correct.

11 Ms. Street is here. We're doing joint administration,
12 and the question was if people file a motion -- this is going to
13 be joint administration.

14 If people file a motion, it's going to one case. If they
15 want it to apply to one debtor, can they -- in the drop-down
16 menu it would be motion to this stay, can they then put re: U.S.
17 Commercial only?

18 MS. STREET: They can.

19 THE COURT: Okay.

20 MS. STREET: They have the ability to add that
21 information to the docket.

22 THE COURT: Okay. Good. All right. Anything else?
23 Do you want to set some dates after July?

24 Oh, I know what I wanted to do was now that we know there's
25 some big motions coming, let's just set those right now rather

1 than deal with an order shortening time. I want to make sure we
2 have time to hear them.

3 (Colloquy not on the record.)

4 UNIDENTIFIED SPEAKER: Your Honor --

5 THE COURT: Let me ask this. Do you think we need
6 some additional dates in June, for example?

7 MR. SCHWARTZER: Well, we're going to be filing -- it
8 might have been filed already -- a motion to hold the funds
9 pending further order of the Court, and we were asking -- I'm
10 sure my office was filing it with the application for an order
11 shortening time to have it heard on May 18th. If you want it to
12 be heard on --

13 THE COURT: I think --

14 MR. SCHWARTZER: -- June 2nd, we could do that.

15 THE COURT: Yeah. I think we should do that
16 separately, so let's go ahead and set that because that's --

17 MR. SCHWARTZER: I don't have the exact title to
18 that, but --

19 THE COURT: Right.

20 MR. SCHWARTZER: But that's --

21 THE COURT: You're going to be filing it by the end of
22 this week, though?

23 MR. SCHWARTZER: Yes.

24 THE COURT: Okay.

25 MR. SCHWARTZER: And what we'll do is we'll just plan

1 on noticing it for June 2nd.

2 THE COURT: June 2nd.

3 MR. SCHWARTZER: Now, we also -- I know on May 18th we
4 have some other motions. We have a motion to limit notice --

5 THE COURT: Yes.

6 MR. SCHWARTZER: -- which we think that -- which we'll
7 be sending out to everybody. So what I want to do is also send
8 a notice of the motion to hold the funds to everybody, so that's
9 why we --

10 THE COURT: That's fine.

11 MR. SCHWARTZER: -- want to file it today, too. But
12 we'll -- a lot of these noticing issues will be solved by
13 limiting notice because we're basically cut down from 7,000
14 people, hopefully, to 2- to 300.

15 THE COURT: Although, on something to --

16 MR. SCHWARTZER: Planned things will be have to be --

17 THE COURT: Well, and I would think, quite frankly, on
18 a motion to not pay, I think you have to send it to all the
19 direct lenders.

20 MR. SCHWARTZER: That's the one we're doing --

21 THE COURT: Okay.

22 MR. SCHWARTZER: -- and that definitely is going to be
23 mailed out to everybody.

24 THE COURT: Okay. Okay.

25 MS. CHUBB: Your Honor, I think I --

1 THE COURT: Sorry.

2 MR. CHUBB: -- I believed that the stack motion would
3 be set on the 18th. So even though I was here yesterday, I
4 think my staff filed a motion to pay and asked to have it set on
5 the 18th, but I presume --

6 THE COURT: So let's move that to June 2nd if
7 you've --

8 MS. CHUBB: Yeah. I think --

9 THE COURT: -- filed that already.

10 MS. CHUBB: Yeah.

11 THE COURT: Okay. I know you had a comment,
12 Mr. LePome.

13 MR. LEPOME: Your Honor, a very small comment. My
14 secretary works from 9:00 o'clock until 3:00 o'clock. We
15 download everything, everything.

16 What, do we need to petition the congress to get you
17 someone who can download because courtesy copies are going to be
18 a burden, too. We want you to be able to download and then have
19 someone on staff to be able to do that.

20 THE COURT: Well, you know, that's fine to say one
21 person, but I've got -- there are thousands -- there are 600
22 docket -- or, no. I'm sorry. Three hundred docket entries
23 already.

24 MR. LEPOME: All right. I understand. So you'd have
25 bushel baskets.

1 THE COURT: Yeah. There are, as of yesterday --

2 MR. LEPOME: I just wanted to get that comment in at
3 the request of my staff.

4 THE COURT: Okay. There's 117 docket entries already
5 in this one case.

6 MR. LEPOME: I know. We've downloaded them all.
7 We've got them.

8 (Colloquy not on the record.)

9 THE COURT: And, you know, on one hand I could make
10 an exception and say, okay, if it's a five-page pleading I'll
11 read it online. But, quite frankly, if I want to get -- well,
12 it's up to you. If you want me to fully consider what you've
13 got to say, then I suggest you get me a courtesy copy.

14 MR. LEPOME: All right. We'll use big type now, too.

15 THE COURT: All right. Thank you.

16 (Colloquy not on the record.)

17 MS. JARVIS: Your Honor?

18 THE COURT: Yeah.

19 MS. JARVIS: One other motion that will be coming up
20 -- and this is kind of in a two-phase motion as we mentioned.
21 We have been looking for DIP financing, and that'll be filed
22 kind of in two phases because there is -- in the budget you saw
23 the \$150,000.

24 That's kind of the preliminary, you know, due diligence
25 amount that we would ask to be paid, you know, and then later

1 ask for the, you know, the approval of the DIP financing, so it
2 would be done in two stages.

3 That would need to -- once we get something, you know,
4 agreed to, we would probably want a pretty quick hearing just on
5 the first phase of it, the 150,000.

6 THE COURT: Well, but the -- I don't disagree. I know
7 you've got to do a quick hearing.

8 But you know what's going to happen? Everybody's going to
9 be here screaming I have to have time to look at it, and it
10 would have continued, anyway, so I suggest that you just have to
11 tell your lender now or never.

12 Now, what I could suggest is we could add another day in
13 June -- for example, June 16th -- and then I know the next date
14 is only three days later, but that would give you the chance to
15 have an extra day in June to hear it, or maybe June 12th,
16 something like that.

17 MR. SAMUELSON: Your Honor, Joel Samuelson (phonetic)
18 of Sidley Austin for Fortress (phonetic). We have made --

19 THE COURT: Mystery lender?

20 MR. SAMUELSON: Mystery lender. The process that's
21 contemplated in the terms you've been working on contemplates
22 the payment of \$150,000, what Mr. Allison called a work fee. We
23 call them due diligence fee.

24 That is supposed to be paid up front as the price for us to
25 do the due diligence so that we don't do the due diligence first

1 and then expend all the resources, including my coming here and
2 all of that, and then find out that the deal is opposed or your
3 Honor won't approve it or we don't like it or whatever. It's
4 supposed to be done ahead of time.

5 And it seems to me that having an order shortening time so
6 that that aspect can be considered and approved on May 18th, or
7 even earlier than that, so that we can do our work -- which has
8 already started.

9 We're not saying we're not going to do anything in the
10 interim, but it's very hard for me to tell Fortress go -- you
11 know, go gang busters with no money and have all of the risk.
12 We're not supposed to have that risk. That's why you have this
13 due diligence fee.

14 So that's why what we contemplate is that there will be a
15 quick hearing on approval of the payment of the due diligence
16 fee that will not bind anybody to anything other than the
17 payment of the fee.

18 THE COURT: Well, that's a pretty big deal.

19 MR. SAMUELSON: Yes, it is.

20 THE COURT: I mean, this whole crowd, I can tell you,
21 is going to be coming storming in on that one.

22 MR. SAMUELSON: I understand, and we're not saying it
23 should be ex parte right now. We understand it has to be on
24 notice of a hearing. But if you wait 25 days just for the
25 approval of the payment of the fee --

1 THE COURT: Okay. Well, I haven't seen that motion
2 coming yet. Is that motion going to be filed by tomorrow?

3 MS. JARVIS: Your Honor, I think we're talking about
4 something that probably wouldn't get done on the ten-day notice,
5 you know, not that we would propose to do on it, and --

6 THE COURT: This is much bigger (indiscernible) this.
7 150,000 is no small change in this case.

8 MS. JARVIS: Right. I agree, and I think we would
9 try --

10 THE COURT: And we're going to have to know that this
11 lender is going to come up with something. We have to know what
12 the lender's proposing and what kind of deal, what the --
13 whether or not -- what the 150,000's going to get us.

14 MS. JARVIS: And we are certainly working towards if
15 we can get something done by the end of this week, we'll file it
16 again, and, you know, we'd ask that the Court would consider
17 having just that initial aspect of it heard on May 18th.

18 THE COURT: If you get it filed so you have ten days,
19 all right, but no less than ten days. It's not getting heard.

20 MS. JARVIS: I agree, your Honor. Thank you.

21 THE COURT: So that means you've got to file it by --
22 you got to file it by Monday.

23 MS. JARVIS: Thank you, your Honor.

24 THE COURT: Oh, by the way, your motion to not pay
25 Bradley (phonetic) -- what was that group called, the --

1 MS. JARVIS: Oh, the Bundy -- the --

2 THE COURT: Bundy loan.

3 MS. JARVIS: Yeah. The Bundy loan. Yes.

4 THE COURT: I saw a motion for an order shortening
5 time, but I've never seen an actual order. So, apparently, it
6 didn't get uploaded or it's lost or something. I've never seen
7 the order.

8 MS. JARVIS: Okay. We will take care of that. I
9 think we have asked for that to be --

10 THE COURT: That can be heard on the 18th.

11 MS. JARVIS: -- heard on the 18th. Yes.

12 THE COURT: Because it was filed last week, but no
13 orders ever surfaced.

14 MS. JARVIS: Okay. We will take care of that, your
15 Honor.

16 THE COURT: Okay. All right. So we have May 18th.
17 Should we -- does it make sense to add another day in June, and
18 my thinking that it probably is. The 16th, 15th, what --

19 (Colloquy not on the record.)

20 THE COURT: It's only three days before the other
21 hearing, but --

22 (Colloquy not on the record.)

23 MR. SCHWARTZER: The 15th? The 15th works.

24 THE COURT: Okay. I've got Goeden on my calendar for
25 November -- or, June 15th at 9:30. Didn't we resolve all the

1 Goeden matters, Mr. Lepome?

2 MR. LEPOME: Pretty well.

3 THE COURT: Oh, maybe that's just the wrap-up on
4 stuff.

5 MR. LEPOME: Yeah. Maybe -- yeah. It's got to
6 (indiscernible) --

7 MR. SCHWARTZER: Is that in the adversary proceedings
8 or in the case?

9 THE COURT: It must be in the case.

10 MR. SCHWARTZER: Oh. Thank you.

11 THE COURT: I don't know.

12 MR. SCHWARTZER: Because we still have a pending
13 adversary against Mr. Goeden and Mr. (indiscernible).

14 THE COURT: Oh.

15 MR. SCHWARTZER: And the trustee, I understood, still
16 had a 727 adversary pending against Mr. Goeden that we were
17 tracking.

18 THE COURT: Okay. So the 15th won't work unless you
19 don't think there are many matters set for that day.

20 MR. SCHWARTZER: I think if we have the 2nd and the
21 21st, adding the 15th would just be a good safety gap, but it
22 shouldn't take -- it shouldn't be an all-day hearing.

23 THE COURT: Okay. All right.

24 THE CLERK: What time (indiscernible).

25 THE COURT: The 15th, I guess. How many matters are

1 on the 15th for that?

2 THE CLERK: I'm looking right now, Judge.

3 (Colloquy not on the record.)

4 THE CLERK: I have a motion to amend judgment and
5 order pursuant to something, so I just have the one --

6 THE COURT: Okay. So let's say 10:00 o'clock then.

7 THE CLERK: There is a scheduling conference on that
8 one adversary.

9 THE COURT: Okay. So we can say 10:00 then.

10 THE CLERK: Did you say 10:00 o'clock?

11 THE COURT: Yeah.

12 THE CLERK: For USA.

13 THE COURT: Yes. Now, do you want to set some dates
14 -- yeah. We better set some dates after July so that -- or do
15 you want to wait until June to see what dates we're going to
16 set?

17 What's easier for people's schedules? I would suspect
18 it's easier to set them now. Okay? So do you want to go with
19 basically every two weeks?

20 THE CLERK: Judge, on the 15th how much time did you
21 want to (indiscernible) you only have to 1:30 because 1:30 you
22 have Chapter 13s.

23 THE COURT: Right. That's fine.

24 THE CLERK: Is that okay?

25 THE COURT: Um-hm. Okay. So we've got July 25th. So

1 we can go August 4th. Does that work? I have an afternoon
2 motion -- we have to make that one at 1:30. I've got my Chapter
3 11s in the morning. And then how about August 17th? Does that
4 work?

5 (Colloquy not on the record.)

6 THE COURT: No?

7 MR. SCHWARTZER: Mr. Allison and I both won't be
8 available that day.

9 THE COURT: 18th is bad, too?

10 MR. SCHWARTZER: What day of the week does that come
11 up?

12 THE CLERK: That's a Friday.

13 THE COURT: That's a Friday.

14 MR. SCHWARTZER: I'll be gone --

15 THE COURT: Okay. So --

16 MR. SCHWARTZER: -- Wednesday, Thursday, Friday of
17 that week.

18 THE COURT: 16th, are you gone then? The 16th works?
19 Okay. That's only ten days apart, but, you know, we can always
20 take these off if there's -- I mean, the worse-case basis you
21 have a hearing, there's nobody here.

22 THE CLERK: Judge, that's a motion calendar in the
23 afternoon, but we can put the motion calendar on for the 17th in
24 the morning.

25 THE COURT: All I see is a motion calendar at 9 --

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(The Court concluded at 03:21:32 p.m.)

* * * * *

1 I certify that the foregoing is a correct transcript from
2 the electronic sound recording of the proceedings in the
3 above-entitled matter.

4 /s/ Biljana Dokic

06/01/06

5 _____
6 Biljana Dokic, Transcriptionist

Date